LEASE (ADMIN)

THIS INDENTURE, made and entered into this __th day of September, 2018, by and between THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS (hereinafter referred to as “Landlord”), an independent and separate agency of the Government of the Virgin Islands, whose address is 3438 Kronprindsens Gade, GERS Complex-Ste 1, St. Thomas, Virgin Islands, 00802, and the VIRGIN ISLANDS HOUSING FINANCE AUTHORITY, an autonomous instrumentality of the Government of the United States Virgin Islands, (hereinafter referred to as “Tenant”) whose address is 3202 Demarara, Suite 200, St. Thomas, VI 00802-6447 each a “Party”, or collectively “the Parties”).

WITNESSETH

That in consideration of the rents to be paid and the covenants and agreements to be performed by the parties and the parties intending to be legally bound hereby, the Landlord does hereby lease and let, and the Tenant does hereby lease and rent, under the terms and conditions set forth hereunder, the following described premises "AS IS", owned by Landlord and situated in St. Thomas, U.S. Virgin Islands:

3438 Kronprindsens Gade, GERS Complex-Ste 1, St. Thomas, Virgin Islands, 00802.

Tenant acknowledges a gross leasable area of 1992 square feet.
ARTICLE I
DEMISED PREMISES

Section 1.01: Landlord does hereby demise and let unto the Tenant, and Tenant does hereby lease and take from Landlord, the Demised Premises, which Demised Premises are more particularly shown on “Exhibit A” annexed hereto and made a part hereof. For the purposes hereof the “Property” shall mean the real property owned by the Landlord on which the Demised Premises are located.

Section 1.02: Tenant’s right to use and occupy the Demised Premises during the term hereof shall include the use, in common with others, of the common areas as hereinafter defined and more fully set forth in Article XIII of this Lease.

ARTICLE II
TERM

Section 2.01

(a) Lease Term:

To have and to hold the said Demised Premises with the improvements thereon and the appurtenances thereunto for a period of Two (2) years commencing on the Effective Date hereof (the “Lease Term Commencement Date”), as defined in Section 2.01(b) below, and ending on the second anniversary thereof (the “Original Term Termination Date”), together with any renewal term(s) as to which Tenant exercises its option of renewal, is hereinafter and hereinafter called “said term”, the “term hereof”, the “Lease Term”, or the “term of this lease”.

(b) Effective Date of This Lease:

The Date the last Party executes the Lease Agreement and delivers a fully executed copy thereof to the other Party (the “Effective Date”) for purposes hereof a scanned and emailed copy
of the executed Lease sent to the other Party shall be deemed delivery.

ARTICLE III
RENT

Section 3.01: Tenant covenants and agrees to pay to Landlord, at Landlord's address above set forth, or at such place as Landlord shall from time to time designate in writing, annual rent for the basic term for the Demised Premises equal to [BLACKED OUT] per square foot, paid in equal monthly installments of [BLACKED OUT] on the first day of each month during the basic term hereof or no later than the fifth (5th) day of the month. If the Rent Commencement Date is not the first day (1st) day of a month, or if the termination date is not the last day of a month, a prorated monthly installment based on a Thirty (30) day month shall be paid at the then current rate for the fractional month during which this lease commences or terminates. For purposes of calculating Tenant's rent obligation pursuant to the provisions of this lease relating thereto, Tenant acknowledges and stipulates that the square footage of the Demised Premises is conclusively deemed to be 1,992 square feet, comprising of office space.

Section 3.02: Rent shall be hand delivered, electronically transferred or mailed, postage prepaid and postmarked to Landlord's office at the address as stated on Page 1 of this lease or as hereafter designated in writing by Landlord from time to time. A fee of ONE HUNDRED DOLLARS ($100.00) shall be assessed by Landlord for all checks returned on grounds of insufficient or uncollected funds. However, should any two (2) checks tendered by Tenant for payment during any calendar year be returned by the bank for insufficient funds, the only acceptable form of payment for the next twelve-monthly rent payments thereafter shall be certified managers checks ("Certified Funds"). Notwithstanding the foregoing, following Tenant's twelve months rent payments by
Certified Funds, Tenant shall be deemed reinstated to good standing and Certified Funds shall no longer be required for payment of rent. Any separate incident of two (2) insufficient fund checks during any calendar year shall trigger the same requirement for Certified Funds. Interest shall be assessed at an annual rate equal to the judgment rate of the U.S. Virgin Islands then in effect on all rent payments which have not been hand delivered, or mailed, certified mail, postage prepaid, on or before the fifth of each month.

ARTICLE IV
COSTS AND ATTORNEYS FEES

Section 4.01: All reasonable costs and attorneys’ fees incurred by either Party in enforcing any of the terms of this lease, after written notice thereof has been given to the defaulting Party in accordance with the notice provisions hereof, including, but not limited to, demand letters by Landlord’s attorneys for rent due and owing, eviction notices, notices to cease and desist, and other like letters, notices and other instruments, shall be charged to the defaulting Party. If due to Landlord, any such sums shall be included as other charges to be paid in thirty (30) days for the month following the date of the said letter, notice or other instrument. If due to Tenant, Tenant shall provide Landlord with a reimbursement request and Landlord shall reimburse Tenant within 30 days of receipt of Tenant’s reimbursement request. In no event shall any sums due to either party be offset against the next rental payment due. In both cases the Party claiming reimbursement of any sums hereunder shall provide the other Party with a detailed statement of the amounts due.

ARTICLE V
SECURITY DEPOSIT

Section 5.01: Upon execution of this lease, the Tenant will deposit with the Landlord the amount of
Landlord shall hold Tenant’s deposit in a non-interest-bearing account as security for the faithful performance of the terms and conditions of this lease. The amount of the security shall forthwith be adjusted prior to commencement of each lease term after the expiration of the basic term to reflect the percentage of the increased amount of annual rent applicable thereto.

(a) If Tenant shall fully and faithfully comply with all of the provisions of this lease, Landlord at the expiration date or upon any later date after which Tenant has vacated the Demised Premises, shall certify to the Tenant that the security may be canceled following which the Security Deposit shall be returned. In such event, Landlord shall be completely relieved of liability with respect to the security deposit.

(b) In the event of a transfer of Landlord’s interest in the Demised Premises, Landlord shall have the right to transfer its right under the security to the transferee of Landlord’s interest. In such event, Landlord shall be deemed released by Tenant from all responsibility to cancel the security pursuant hereto; and Tenant agrees to look solely to the transferee for satisfaction of the Landlord’s obligations with respect thereto.

(c) The security shall not be mortgaged, assigned or encumbered by Tenant. No action of Landlord in enforcing its rights with respect to a default shall be deemed to be a termination of this lease so that Tenant shall be entitled to a cancellation of the security.

**ARTICLE VI**

**ADDITIONAL RENT**

**Section 6.01:** All rent or additional charges not paid by Tenant on its due date shall constitute a breach of this Lease. Landlord retains exclusive right to terminate this Lease upon said breach, but
only following expiration of any applicable cure periods as provided in Section 20.01 hereof, by giving Tenant notice via certified mail, returned receipt, stating that Tenant is in breach; and that Landlord is exercising its option to terminate this Lease. In such circumstance, the Tenant agrees to vacate within thirty (30) days. Irrespective of Landlord’s decision to terminate the Lease, Tenant shall still be responsible for the rent remaining on the lease; however, Landlord shall take reasonable steps to re-let the Demised Premises. All monies owed shall bear interest at the highest rate permitted by law or eighteen percent (18%) per annum, whichever shall be less (the “Lease Interest Rate”).

**ARTICLE VII**

**USE OF PREMISES**

**Section 7.01:** Tenant acknowledges that the rental rate negotiated and fixed herein is in part based on the Tenant’s commitment to restrict its usage of the Demised Premises as hereinafter defined. Tenant covenants and agrees that said Demised Premises, during the term of this lease, shall be used and occupied for the purpose of conducting therein the operations of the V.I. Housing Finance Authority. Tenant may request the consent of Landlord for permission to use the Demised Premises for other purposes not inconsistent with the current usage. In the event that Tenant uses the Demised Premises in violation of this Section of the Lease, Landlord shall have the remedies set forth in Section 20 of the Lease. Notwithstanding any provision in this Lease to the contrary, unless otherwise agreed in writing between the Parties, it is expressly acknowledged by Landlord that this Lease contains no implied or express covenant for Tenant to conduct business in the Premises, continuously or otherwise, subject to the Lease terms. In the event Tenant discontinues operations in the Premises (excluding, however, a permitted discontinuance of operations, as defined in Article 17
hereof), and such discontinuance of operations continues for thirty (30) consecutive days, Landlord may, at any time thereafter during the Lease term, elect to terminate this Lease and regain possession of the Premises by written notice to Tenant (the “Termination Notice”), in which event this Lease shall terminate as to all obligations accruing thirty (30) days after the date of receipt of the Termination Notice. Tenant shall give Landlord advance notice of any intended discontinuance of business from the Premises as soon as would be reasonable for Tenant to do so, considering Tenant’s need to keep such decision confidential. Tenant shall be obligated to pay Base Rent plus ten percent (10%) per month as Additional Rent until the end of the Lease Term with respect to this Section 7.01, and Landlord shall take reasonable steps to re-let the Demised Premises.

Tenant shall keep no spontaneous combustible, or explosive liquids or materials on the Demised Premises, except in strict compliance with Title 23, Virgin Islands Code, Chapter 9, and any and all other provisions of law thereto relating. Storage of inventory and other goods and materials must be arranged in accordance with the V.I. Fire Service's Regulations.

**ARTICLE VIII**

**NOISE, WASTE OR NUISANCE**

**Section 8.01:** Tenant further agrees not to suffer, permit or commit any waste, nor to allow, suffer or permit any odors, vapors, steam, water vibrations, noises or other undesirable effects to emanate from the Demised Premises or any equipment or installation therein into other portions of the Building, or otherwise to allow, suffer or permit the Demised Premises or any use thereof to constitute a nuisance or unreasonably to interfere with the safety, use or enjoyment of the premises by Landlord or any other tenants or their customers, invitees or other persons lawfully in or at the Demised Premises. Upon written notice by Landlord to Tenant that any of the aforesaid is occurring,
Tenant agrees to, within ten (10) days thereafter to make such changes in the Demised Premises and/or install or remove such apparatus or equipment as may be required by Landlord for the purpose of obviating any condition, provided however that in cases of exigent circumstances Tenant shall cease and discontinue same as soon as practical, but in any event within seventy-two hours following written notice by Landlord. In the event of exigent circumstances which cannot cured within seventy-two hours, Tenant shall provide Landlord with written notice thereof setting out the reasons the exigent circumstances cannot be cured within seventy-two hours; and outlining Tenant’s efforts to promptly cure the exigent circumstances along with an estimated date of completion.

**ARTICLE IX**

**SIGNS, AWNINGS AND CANOPIES**

**Section 9.01:** All signs are subject to Landlord’s written approval as to appearance, dimensions, material, color, design and content and are to be installed at locations designated by Landlord. Tenant shall not place or maintain any sign, awning or canopy in, upon or outside the Demised Premises. Tenant may place in or on the display windows any sign, lettering or advertising or promotional matter of any kind without first obtaining Landlord’s written consent, provided however that in the event Landlord reasonably determines any such matter to be objectionable to Landlord, Tenant agrees to remove same upon receipt of written notice by Landlord. If Landlord shall deem it necessary to remove any sign or other installation in order to paint, redecorate or to make any repairs, alterations or improvements in or to the Demised Premises, to which Tenant’s signs or other installations may be affixed, Landlord shall have the right to do so, provided the same be removed and replaced at Landlord’s cost and expense, unless the necessity shall have been occasioned by any
act, omission or negligence of Tenant or any subtenant, licensee or concessionaire of Tenant or their respective employees, agents, invitees or contractors, in which event Tenant agrees to remove and replace the same, at Tenant's cost and expense. Landlord may reasonably withhold the approval of any sign. All signs approved shall conform to sizes regulated in the Virgin Islands Code.

Upon the expiration or the sooner termination of this Lease, and before the security deposit is surrendered by Landlord, the Tenant, shall remove, obliterate, or paint out any and all advertising, signs, posters and similar devices placed by the Tenant on the premises; Landlord to be the sole judge as to which of these actions shall be performed. In the event of the failure on the part of the Tenant so to remove, obliterate or paint out each and every sign or piece of advertising so requested by the Landlord, the Landlord may perform such necessary work and the Tenant shall be responsible for, and pay the cost thereof, upon the demand to the Landlord.

**ARTICLE X**

**ASSIGNMENT AND SUBLETTING**

**Section 10.01:** Tenant shall not assign, mortgage or encumber this Lease, in whole or in part, or sublet (collectively “Transfer”) the Demised Premises without the prior written consent of Landlord which consent shall not be unreasonably withheld, delayed, or conditioned. In no event shall any sublessee use the Demised Premises for any purpose other than those allowed under Section 7.01 of this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. In the event of any such subletting, Tenant shall remain primarily liable for all obligations of Tenant to Landlord under the Lease in the event the sublessee fails to honor its obligations under the sublease. The consent by Landlord to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This
prohibition against Transfer shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease is Transferred or if the Demised Premises or any part thereof is occupied by anybody other than Tenant, in contravention of this Section 10.01, the Tenant shall pay to the Landlord an additional amount equal to thirty-five percent (35%) monthly of such subleasing income as additional rent. This additional rent shall become due and payable on the next rent day after such subletting rent become due from the subtenant. No such Transfer without the written consent of the Landlord, occupancy without the written consent of the Landlord or collection shall be deemed a waiver of this provision or the acceptance of the assignee, sublessee or occupant as tenant, or as a release of Tenant from the further performance by Tenant of the provisions on its part to be observed or performed herein. Notwithstanding any assignment or sublease, Tenant shall remain fully liable and shall not be released from performing any of the terms of this Lease.

For the purposes hereof, Landlord may consider the following criteria in determining whether to consent to a Transfer: (a) the financial stability of the proposed transferee; (b) the professional reputation of the transferee and its principals; and (c) the proposed use of the Demised Premises by the transferee, if different from the Permitted Use hereunder, in the context of the other uses of other tenants in properties owned by Landlord. All proposed transferees shall reasonably cooperate with Landlord in examining the forgoing criteria and shall promptly provide Landlord with any information reasonably related to such criteria. The transferee’s failure to so cooperate shall be grounds for the Landlord to refuse to consent to the proposed Transfer.
ARTICLE XI
REPAIRS, MAINTENANCE, ALTERATIONS

Section 11.01: The Landlord shall be responsible for the maintenance and repair of the roof, exterior
dalls, and all other structural components of the building of which the Demised Premises are a part.
Landlord shall not be responsible for repairs to the Tenant's fixtures and property. Tenant shall, at its
own cost and expense, take good care of, including cleaning and maintaining, the interior of its
Demised Premises and the fixtures and equipment therein and appurtenances thereto, including the
storefront and windows, doors, interior signs, floor coverings, interior walls, columns and partitions,
non-common area lighting, light bulbs, plumbing, air conditioning and sewerage facilities within the
Demised Premises. "Repair and Maintenance" as used herein shall mean all repairs, replacements,
renewals, alterations, repainting, redecorating, electrical maintenance, cleaning, additions and
betterments. All contracts over $5000.00 between Tenant and others for installations and alterations
involving the Demised Premises, shall be subject to approval by Landlord, which approval shall not
be unreasonably withheld, conditioned, or delayed. Tenant shall maintain the Demised Premises in a
neat, clean and sanitary condition at all times which obligation shall include, but not be limited to:
removal and disposal of Tenant's garbage and regular treatment for insects and pests.

Section 11.02: If either Party, after it shall have been given twenty (20) days' notice (except in a
case of an emergency in which event reasonable notice under the circumstances shall be sufficient),
refuses and neglects to make any repair for which it is responsible, or if any repair is necessitated by
reason of either Party's negligent acts or omissions, then the other Party shall have the right, but shall
not be obligated to make such repairs. In the event that such work is the responsibility of the Tenant,
it shall be paid for by the Tenant as additional rent, which shall be due and payable on the next rent
day. In the event that such work is the responsibility of the Landlord, Tenant shall not have the right to offset the cost thereof against any moneys due from Tenant to Landlord hereunder. Both Parties in their exercise of any such self-help shall use commercially reasonable judgment when evaluating bids from vendors for such reimbursable work, in the same manner as if the non-responsible Party were to contract with said vendor for its own account in the absence of reimbursement by the other Party. Regardless, the Party responsible for the payments shall, along with the reimbursement request furnish the other Party with a detailed accounting of the amounts advanced.

**ARTICLE XII
UTILITIES**

**Section 12.01:** Tenant shall be responsible for the cost of all utilities including electricity, water, and telephone, and Landlord shall in no way be responsible for such obligation(s) incurred by Tenant for any such services. Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which such utilities are supplied to, distributed in, or serve the Demised Premises.

In the event Tenant determines, in its sole discretion, that a back-up emergency power generator (the “Tenant Emergency Generator”) is required or desirable for Tenant’s operation, Tenant shall have the right to install such a generator at Tenant’s sole cost and expense, subject to Landlord written approval of location, specification and configuration, and design or any structure that may be required to house generator, which approval shall not be unreasonably withheld, conditioned or delayed. Further installation of any Tenant Emergency Generator shall be compliant with all applicable code requirements governing same.

**Section 12.02:** Tenant shall pay for all power actually consumed on the Demised Premises based
upon metering or other approved methods of measurements. Other measurements may include a
determination based upon the relationship of that portion (percentage) of the premises occupied by
tenant based upon square footage divided into the total utility bills for the complex.

ARTICLE XIII
COMMON AREA

Section 13.01 For the purpose of this Lease, wherever used, “common area” shall mean all areas and
space provided by Landlord for the common or joint use and benefit of the occupants of the
premises. Landlord hereby grants to Tenant the privilege to use the common areas during the term of
this Lease. These privileges may be exercised in common with the Landlord and any designee of
Landlord, and are subject to Landlord’s rules and regulations.

(a) Area Maintenance:

Included in the rental rate specified in Section 3.01 hereof, at no additional cost to Tenant, Landlord
will pay all costs in connection with the operation, maintenance, repair and/or replacement of the
Areas (the “Area Maintenance”). As part of said Common Area Maintenance, Landlord hereby
agrees, during the entire term hereof, including any extensions, to provide services to the Areas,
including but not limited to (i) repairing, maintaining, cleaning and lighting, (ii) repairing and
maintaining any utility facilities connecting to Government facilities, including, without limitation,
sanitary sewer lines, storm drainage lines, electrical utility lines and systems outside of the Demised
Premises, and directional signage.
ARTICLE XIV
INDEMNITY

Section 14.01:

(a) Tenant covenants and agrees to save Landlord harmless from any and all actions, suits, damages, penalties, claims or demands of whatsoever kind or nature (hereinafter called "claim") that may be made against Landlord or the leased premises arising out of or in any way connected with the occupation or use of the leased premises, including but not limited to, any failure of Tenant to keep or perform each and all of the covenants, agreements and conditions to be kept and performed by it hereunder; and Tenant shall defend Landlord from and against each and every claim to the end and intent that the Landlord shall suffer no loss or cost, including reasonable attorney's fees, of whatever kind, on account of the assertion of any such claim, except for those apportioned damages solely caused by any act or omission of Landlord or its agents, servants, or employees which would amount to willful conduct. The exception to the Tenant's duty to hold the Landlord harmless set forth in the preceding statement shall in no way be construed to limit or affect the Tenant's duty to insure the Landlord under paragraph XV hereof.

(b) All damage or injury done to the premises by Tenant or by any person who may be in or upon the premises with the consent of Tenant, or caused by the negligence of same, shall be paid by Tenant.

(c) Landlord shall not be responsible or liable at any time for any defects, latent or otherwise, in any buildings or improvements in or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable at any time for loss of life, or injury or damage to any one or to any property or business of Tenant, or those claiming by, through or under
Tenant, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing or backing up of water or sewage in any part of the Demised Premises, or caused by or resulting from the interruption in the supply on any utilities, acts of God or the elements, or resulting from any defect or negligence in the occupancy, construction, operation or use of any buildings or improvements in the complex including the Demised Premises, or any of the equipment, fixtures, machinery, appliances or apparatus therein. Additionally, Landlord shall not be liable to Tenant for any loss or interruption of business.

(d) Tenant agrees to indemnify, defend, save and hold harmless Landlord from and against all claims, demands, liabilities, suits, damages and costs of every kind and nature, including court costs and attorney’s fees (collectively, "Claims"), that result from the negligence of Tenant, its employees, associates, agents, representatives, contractors, subcontractors, and/or consultants, during the term of this lease and any extensions. Notwithstanding anything to the contrary herein, Tenant shall not be liable for any portion of any claims that result from the acts or omissions of the Landlord, its employees, representatives and/or agents.

(e) Tenant shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Demised Premises or in the Building, or any defects therein.

**ARTICLE XV**
**FORM AND EVIDENCE OF INSURANCE**

**Section 15.01**

(a) Tenant Insurance:

Beginning on the Effective Date of this Lease and continuing during the entire Term of this Lease, Tenant shall, at its own expense, carry and maintain in force Commercial General Liability ("CGL")
insurance, or at Tenant’s option CGL with an additional CGL Umbrella policy, with a combined aggregate limit of not less than ONE MILLION DOLLARS ($1,000,000.00). Said policy or policies shall name Landlord as an additional insured, and the underlying CGL coverage (excluding umbrella) shall have limits of no less than ONE MILLION DOLLARS ($1,000,000.00) to cover the claims of bodily injury for any single claimant, and of not less than ONE MILLIONS DOLLARS ($1,000,000.00) to cover more than a single claim which may arise from a single accident, and FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) property damage insurance resulting from any occurrence; and said policies shall bear an endorsement protecting Landlord as its liability may appear. Landlord and Tenant agree to review every two (2) years, the minimum insurance limits above stated and to appropriately increase the limits so as to reflect any inflationary trends.

**Section 15.02:** Tenant shall furnish Landlord with appropriate evidence of said insurance coverage within twenty (20) days of the Effective Date, provided that Landlord may restrict Tenant from accessing the Demised Premises until Landlord is in receipt of such evidence of Insurance. At least thirty (30) days prior to the expiration or termination of any policy, or in the event Insurer provides Tenant with less than 30 days’ notice, as soon as actual notice is received by Tenant, Tenant shall deliver to the Landlord appropriate evidence that such insurance has been renewed or replaced. Upon Tenant’s failure to deliver such evidence, Landlord may, at its option, obtain such insurance and the cost thereof shall be paid as additional rent due and payable upon the next ensuing rent day, and in the event, Tenant fails to pay the additional sum, Landlord shall have the option to declare such failure as a material breach and commence an immediate action for ejectment.

**Section 15.03:** The insurance shall include the GERS as an additional insured. Such insurance
shall be provided by insurer(s) rated A-, or better by A.M. Best & Company, or otherwise approved in writing by the GERS. Lessee shall not cancel or modify such coverage, except upon endeavoring to provide thirty (30) days prior written notice to the GERS. Further, in the event Tenant receives any notice of coverage termination by Tenant's insurance provider, Tenant shall immediately provide Landlord Notice of same.

Section 15.04: Tenant agrees to procure and maintain property insurance to cover the alterations, additions and improvements, and contents installed on or upon the Demised Premises by Tenant at Tenant's sole and separate expense. The proceeds of such insurance shall be payable to Tenant. Such insurance shall be in an amount not less than eighty percent (80%) of the replacement cost of such improvements and shall cover such hazards as are insured against fire and extended coverage insurance of the character customarily in force at the time in the Virgin Islands upon the premises and improvements of similar circumstances by a reasonable prudent owner of such premises and improvements.

ARTICLE XVI
DAMAGE OR DESTRUCTION

Section 16.01 Landlord's Obligation to Rebuild: If the Demised Premises shall be damaged by act of God, fire or other casualty insured under Landlord's insurance policies or for which Landlord is required to keep insurance hereunder, then, subject to the rights of any mortgagee, upon Landlord's receipt of the insurance proceeds, Landlord shall, except as otherwise provided herein, repair and restore the same (exclusive of Tenant's trade fixtures, decorations, interior sights and contents) substantially to the condition thereof immediately prior to such damage or destruction, limited.
however, to the extent of the insurance proceeds received by Landlord. If by reason of such occurrence: (a) the Demised Premises are rendered wholly untenantable, or (b) the Demised Premises are damaged in whole or in part as a result of a risk which is not covered by Landlord's insurance policies or (c) the Demised Premises are damaged to such an extent that the remainder of the Demised Premises cannot, in the sole judgment of Landlord, be operated as an integral unit, or if Landlord determines that it is not commercially feasible to restore the Demised Premises, in Landlord's sole and absolute discretion, then or in any of such events, Landlord may elect either to repair the damage as aforesaid, or to cancel this lease by written notice of cancellation to Tenant within ninety (90) days of such occurrence. The notice of cancellation shall have the same force and effect as the date set forth in Section 2.01(a). Upon the termination of this Lease, as aforesaid, Tenant's liability for rents reserved hereunder and all other obligations of Tenant shall cease as of the effective date of the termination of this lease, subject, however, to the provisions for the prior abatement of rent hereinafter set forth.

Section 16.02 Tenant's Right to Cancel: If following an event of casualty Landlord either (a) fails to restore the Demised Premises to its condition immediately prior to the casualty, within the ninety (90) days following said casualty event, Tenant shall have the right to terminate this Lease upon written notice to the Landlord. Upon the termination of this Lease, Tenant’s liability for rents reserved hereunder and all other obligations of Tenant shall cease as of the effective date of the termination of this lease, subject, however, to the provisions for the prior abatement of rent hereinafter set forth.
Section 16.03 Tenant’s Obligation to Rebuild: Unless this lease is terminated by either Party, as aforesaid, and Landlord restores the Demised Premises and the Adjacent Premises in accordance with Landlord’s obligations under Section 17.01 hereof, this Lease shall remain in full force and effect and the Parties waive the provisions of any law to the contrary. In that event, Tenant shall also repair, restore or replace Tenant’s trade fixtures, decorations, signs and contents in the Demised Premises and all other items which Tenant is required to remove or replace in a manner and to a condition at least equal to that existing prior to their damage or destruction, subject to the availability and receipt by Tenant of sufficient insurance proceeds to make such reconstruction feasible in Tenant’s sole and absolute discretion.

Section 16.04 Rent Abatement: Partial destruction, including smoke damage, to the Demised Premises shall not render the lease voidable or terminate it except as provided in this Article XVII of this Lease. If the Demised Premises’ destruction is only insubstantial, due to no fault of Tenant, Landlord shall promptly make the necessary repairs. If by reason of such fire or other casualty the Demised Premises are rendered wholly untenantable, the Rent shall be fully abated or if only partially damaged, the Rent shall be abated proportionately as to that portion of the Demised Premises in which such damage substantially interferes with Tenant’s business conducted on the Demised Premises.

In either event (unless either Party elects to terminate this Lease, as aforesaid) rent abatement shall remain in effect until five (5) days after notice by Landlord to Tenant that the Demised Premise have been substantially repaired and restored or until Tenant’s business operations are restored in the Demised Premises, whichever shall occur sooner. Tenant shall continue the operation of Tenant’s
business in the Demised Premises or any part thereof not so damaged during any such period, to the extent reasonably practicable from the standpoint of prudent business management.

Section 16.05 Waiver of Certain Claims: Subject to Section 25.01 hereof, and except for the abatement of the Rent hereinabove set forth, Tenant shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Demised Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. The provisions of any statute or other law which may be in effect at the time of the occurrence of any such damage or destruction under which a lease is automatically terminated or a Tenant is given the right to terminate a lease upon the occurrence of any such damage or destruction, are hereby expressly waiveable by Tenant.

ARTICLE XVII
CONFORMANCE TO LAW AND PROHIBITED ACTS

Section 17.01: Tenant covenants and agrees to use and occupy the Demised Premises in strict conformance with the laws, rules, regulations and ordinances of the Government of the Virgin Islands, the United States Federal Government and of any other applicable government unit including, but not limited to, laws relating to the use and occupancy of real estate; subject, however, to the right of Tenant, at its option to contest the validity of any unreasonable rule or regulation, and so long as such contest does not threaten or impair Landlord's property or business and is pursued diligently. Landlord shall be responsible for ensuring that the building is in compliance with the American with Disabilities Act ("ADA"). Tenant shall ensure its operations are in compliance with American with Disabilities Act ("ADA"). Landlord agrees to maintain and operate the Property and
the Common Areas in strict conformance with the laws, rules, regulations and ordinances of the Government of the Virgin Islands, the United States Federal Government and of any other applicable government unit.

**Section 17.02:** Tenant shall not commit, or allow to be committed, any waste on the Demised Premises or damage to the building.

**Section 17.03:** Tenant shall neither cause nor permit any lien to be placed or filed against the Demised Premises. Any contract made by Tenant with suppliers or contractors for the repair of the Demised Premises of improvements consented to by Landlord shall contain a clause whereby the contractors, suppliers, or others waive any right they may have to claim a construction lien on Landlord’s property or against Landlord’s interest under Chapter 12 of Title 28, Virgin Islands Code or its successor statutes. Landlord or its property shall not be liable for construction liens, artisan’s liens, mechanic’s liens, or tax liens.

**ARTICLE XVIII SUBORDINATION**

**Section 18.01:** The Tenant hereby subordinates this Lease to any mortgages or encumbrances which the Landlord may have placed, which may have been placed, or which the Landlord may hereafter place or which may hereafter be placed, upon the Demised Premises; and the Tenant hereby agrees to execute, on demand, any instrument which may be deemed necessary or desirable further to render any such mortgages or encumbrances, wherever made or recorded, subsequent or prior to this lease; provided however, that the obligation of Tenant hereunder shall not apply unless the mortgagee under any mortgage hereafter placed upon the Demised Premises shall enter into a standard non-disturbance clause with Tenant under the terms of which Tenant can remain in
possession of the Demised Premises under the terms hereof so long as no default by Tenant exists under such terms.

**ARTICLE XIX**

**DEFAULT**

**Section 19.01:** In the event Tenant fails to pay any rent due hereunder or fails to comply with any other condition or covenant of the Lease, Landlord shall give Tenant written notice setting forth each instance of Tenant’s breach. Tenant’s failure to cure any breach within thirty (30) days of Tenant’s receipt of Landlord’s notice thereof, shall constitute an Event of Default by Tenant. In the event said such breach cannot be cured within thirty (30) days, Tenant shall notify Landlord of its inability to cure within 30 days and provide landlord with a date that the breach shall be cured. Upon landlord’s approval, Tenant shall commence to cure no later than fifteen (15) days following Landlord’s notice thereof and thereafter diligently rush said cure to completion. Landlord’s provision of additional time to cure said breach shall not affect or in any way extend the time to cure any further breaches by Tenant.

**Section 19.02:** At its option, Landlord may take possession of the Demised Premises and rent the same for the account of Tenant, holding Tenant liable for any deficiency in rental arising during the term of this lease.

**Section 19.03:** Appointment of any kind of receiver, to operate or take possession of Tenant’s business or assets, Tenant’s general assignment for benefit of creditors, Tenant’s insolvency attachment of or execution upon Tenant’s leasehold or the contents of Tenant’s Demised Premises, and any judicial action under any chapter of the Bankruptcy Act, shall be deemed a breach of this lease by Tenant.
Section 19.04: In the event of any breach of any of the covenants and agreements on the part of the Tenant, other than payment of rent, and other than a breach under the immediately preceding section, Landlord shall give notice to Tenant by certified mail return receipt requested or hand delivery of such breach or default. Should Tenant fail to cure such default within thirty (30) days of the posting of such notice, Landlord may, at its option, declare the lease at an end and re-enter and repossess and/or re-let the Demised Premises as above described, unless the Tenant is with reasonable diligence proceeding to cure such default.

ARTICLE XX
TAKING OR PARTIAL TAKING

Section 20.01: If the whole or a substantial part of the premises shall be taken for any public or quasi-public use, under any statute, or by right of eminent domain or private purchase in lieu thereof, when possession shall be taken of the Demised Premises, or a substantial part hereof, the term and options hereby demised and all rights and obligations of Tenant hereunder shall immediately cease and terminate and the rent shall be adjusted as of the time of such termination, and Tenant shall have no claim against the Landlord for the value of the unexpired term hereof. It is agreed and understood that the Tenant shall not share in any condemnation award related to Landlord’s property, but Tenant shall receive any condemnation award specifically made relating to Tenant’s leasehold interest, improvements, or other Tenant owned property. Nothing herein shall be construed to obligate Landlord to file a claim for Tenant’s leasehold interest on Tenant’s behalf, and Tenant acknowledges that in the event of any Taking or Partial Taking, Tenant will have to file its own damages claim against the condemning authority.
ARTICLE XXI
RIGHT OF INGRESS AND EGRESS

Section 21.01: Tenant, its employees, customers, guests, contractors, suppliers of materials, furnishers of service, and/or invitees, in common with others shall have a non-exclusive right of ingress to and egress from any and all Premises demised herein and such other portions of the area to or from which said persons shall reasonably require ingress at such locations as Landlord may from time to time designate.

ARTICLE XXII
LANDLORD NOT RESPONSIBLE FOR TENANT OR TENANT'S BUSINESS

Section 22.01: There shall be no liability on the part of Landlord to Tenant's business by reason of any repairs, improvements, maintenance, or casualty damage to the premises. Landlord or its agents, shall not be liable for any loss or damage to property of either Tenant or its customers.

Landlord or its agents, shall not be liable for any injury or damage to persons, property or business resulting from fire, windstorm, earthquake, explosion, electricity, water or failure of same, rain or leaks from any part of said premises or from the pipes, appliances or plumbing works or from any other place, or by dampness or by any other cause of whatsoever nature, nor shall Landlord or its agents be liable for damage caused by other tenants or persons in said premises or caused by operations in construction of any private, public or quasi-public work, nor shall Landlord be liable for any latent defect in the Demised Premises or in the building of which they form a part. Tenant further agrees not to obstruct, object, or otherwise prevent the further development of the adjoining premises owned by Landlord, including the erection of additional structures.
ARTICLE XXIII
COVENANT OF QUIET ENJOYMENT

Section 23.01: Landlord covenants that Tenant, on paying the rentals and keeping, observing and performing all of the other terms, covenants, conditions, provisions, and agreements herein contained on the part of Tenant to be kept, observed and performed, shall during the term granted herein, peaceably and quietly have and hold the Demised Premises, subject to the terms, covenants and conditions hereof.

ARTICLE XXIV
HOLDING OVER

Section 24.01: If Tenant holds over after the expiration of earlier termination of this Lease, and if Tenant is not otherwise in default hereunder, such holding over shall not be deemed to extend the term or renew this Lease; but the tenancy thereafter shall continue as a tenancy from month to month at the sufferance of Landlord upon the terms and conditions herein contained and at the Rent in effect immediately preceding the said expiration date plus ten percent (10%) per month.

ARTICLE XXV
RIGHTS CUMULATIVE

Section 25.01: It is agreed that each and every one of the rights, remedies and benefits provided by this lease shall be cumulative and shall not be exclusive of any other said rights, remedies, and benefits allowed by law.

ARTICLE XXVI
NON-WAIVER

Section 26.01: The failure of either Party to insist in any one or more instances upon a strict performance of any of the covenants of this lease or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant or option, but the same
shall continue and remain in full force and effect. The receipt by the Landlord of rent, or the payment of rent by Tenant, as the case may be, with knowledge of the breach of any covenant hereof by the other Party, shall not be deemed a waiver of such breach and no waiver by the non-breaching Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by that Party. Even though the Landlord shall consent to an assignment hereof, no further assignment shall be made without express consent in writing by the Landlord.

ARTICLE XXVII
CAPTIONS

Section 27.01: The captions, as to contents of particular paragraphs herein, are inserted only for convenience, and are in no way to be construed as a part of this lease or as a limitation on the scope of the particular paragraphs to which they refer.

ARTICLE XXVIII
INTERPRETATIONS

Section 28.01: It is agreed that if any provision of this lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this lease, all of which other provisions shall remain in full force and effect, and it is the intention of the Parties hereto that if any provision of this lease is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning, which renders it valid.

ARTICLE XXIX
THIS LEASE

Section 29.01: It is agreed that Landlord has not made any statements, promises or agreements, or taken upon itself any engagement whatever verbally or in writing, in conflict with the terms of this
lease, or that in any way modifies, varies, alters, enlarges or invalidates any of its provisions and that no obligations of Landlord shall be implied in addition to the obligations herein expressed.

Section 29.02: Tenant agrees there are no representations on the part of Landlord or its agents as to the present or future condition of said premises that in any way varies or enlarges the provisions of this lease.

Section 29.03: This lease may not be varied or modified except in writing subscribed to by each of the Parties hereto, and it is also agreed and understood that this lease shall be binding on the heirs, assigns and successors of all the Parties hereto, it is being further understood, however, that Landlord shall only be bound to recognize such assigns or successors of Tenant as Landlord consents to.

Section 29.04: Tenant represents that it has examined the Demised Premises to its satisfaction and accepts them in their present condition and agrees there are no representations on the part of Landlord or its agents as to the present or future condition of said premises that in any way varies or enlarges the provisions of this lease.

**ARTICLE XXX NOTICE**

Section 30.01: Whenever under this lease a provision is made for notice of any kind, it shall be deemed sufficient service thereof, unless otherwise provided for herein, if such notice is in writing, addressed to the Party’s name on the signature page of this lease and sent by registered mail, or by hand delivery receipted for.

Section 30.02: Any notices required hereunder shall be deemed sufficient if in writing and mailed, returned receipt requested as follows:
Landlord:
GOVERNMENT EMPLOYEES RETIREMENT SYSTEM
Attention: Administrator
3438 Kronprindsens Gade
GERS Complex- Ste. 1
St. Thomas, VI 00802-5750

Tenant:
VIRGIN ISLANDS HOUSING FINANCE AUTHORITY
Attention: Daryl Griffith, Executive Director
3202 Demarara, Suite 200
St. Thomas V.I. 00802-6447.

Section 30.03. Change of Address: Either Party’s address may be changed from time to time by such Party giving written notice to the other Party of the new address.

ARTICLE XXXI
WAIVER OF REDEMPTION

Section 31.01: The Tenant hereby waives any and all rights to recover or regain possession of the premises and all rights of redemption granted by or under any present or future law in the event it is evicted or dispossessed for any cause, or in the event the Landlord obtains possession of the premises in any lawful manner.

ARTICLE XXXII
SAVING CLAUSE

Section 32.01: If any provisions of this Agreement, or the application, should be rendered or declared invalid by any Court Action or by reason of any existing law, the remaining parts or portions of this Agreement shall remain in full force and effect.

ARTICLE XXXIII
ALTERNATIVE DISPUTE RESOLUTION

Section 33.01: The Parties anticipate gaining the benefits of a speedy, impartial, final and binding
dispute resolution procedure. The parties shall mediate any claims or controversies. Should mediation fail to resolve the claim or controversy, the Parties mutually consent to the resolution by mandatory and binding arbitration of all claims or controversies ("Claims" and each, a "Claim"), arising out of this Lease pursuant to the terms hereof. Either Party can initiate arbitration of any Claim hereunder by providing written notice to the other Party setting forth the nature of the Claim in sufficient detail to enable the other Party to understand the issues presented. The arbitration shall take place on St. Croix, U.S. Virgin Islands. Any Claim to be arbitrated pursuant to the terms of this Lease shall be arbitrated by a single arbitrator selected by the Parties. If the Parties cannot agree on a single Arbitrator, the Parties shall jointly request the American Arbitration Association (AAA) to provide to the parties a panel of seven (7) arbitrators in accordance with the AAA rules. Each party, commencing with the one seeking arbitration, shall alternately strike one (1) name from the list and the name of the person last appearing on the list shall be designated as the Arbitrator and his/her appointment shall be binding on both parties. It is the specific goal of the Parties that the arbitration shall be accomplished within ninety (90) days of the request for arbitration. The formal Rules of Evidence shall not apply to the arbitration and discovery shall be permitted.

The Parties shall have all rights to conduct discovery as provided herein. Each party shall have the right to all discovery available under the Federal and Virgin Islands Local Rules of Civil Procedure on an expedited basis. The arbitrator shall have the authority to extend the deadlines for such discovery, to include depositions, interrogatories, document production, or otherwise, as the arbitrator deems necessary to a full and fair exploration of the issues in dispute. A party’s request to extend the deadlines for discovery shall not be unreasonably denied.
The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence. On application of a party and for use as evidence, the arbitrator may permit depositions to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing.

Notwithstanding the forgoing, no less than seven (7) days prior to any arbitration hearing, the Parties shall exchange a list of the witnesses to be called (including a summary of each witnesses’ anticipated testimony) and copies of all documents to be presented to the Arbitrator(s). Except for good cause shown, neither Party will be permitted to call a witness not on the exchanged lists or to present any documents not exchanged pursuant hereto. Unless the Arbitrator determines that one Party’s position with regard to a Claim was frivolous or taken solely for delay, each Party shall pay its own costs and attorney’s fees relating to the arbitration and each shall pay one-half of the Arbitrator(s’) fees and costs. The Arbitrator shall have no jurisdiction or authority to add to, detract from, or alter in any way the provisions of the Lease. The decision of the arbitrator shall be final and binding upon the Parties. Any Party may bring an action in any court of competent jurisdiction to compel arbitration under this Lease and enforce an arbitration award.

Section 33.02: Both Parties agree, that in the event resort to the Courts of the Virgin Islands becomes necessary in accordance with Section 36.01 hereof, that they hereby waive any right they have or had or might have or might have had to trial by jury, and further stipulate and agree that all actions may be heard by a judge or judges of a duly-constituted court of record of the Territory of the Virgin Islands,
ARTICLE XXXIV
LEASE IS ENTIRE AGREEMENT

Section 34.01: This Lease represents the entire Agreement between the Parties hereto. No oral agreements, covenants or conditions survive this written expression of the Agreement between Parties. Any oral agreements in contravention of any of the terms hereof are void. Any oral agreements which modify, alter, expand or contract any of the duties, rights, obligations or liabilities of any of the Parties hereto are voidable at the sole option and in the exclusive discretion of the Landlord.

ARTICLE XXXV
GOVERNING LAW

Section 35.01: The laws of the U.S. Virgin Islands shall govern the validity, performance, and enforcement of this Lease.

ARTICLE XXXVI
OPTION TO TERMINATE

Section 36.01

(a) Termination Upon Destruction of Premises:
Landlord does hereby covenant for itself and assigns that in case the Demised Premises shall without the fault or negligence of the Tenant, its executors, administrators or assigns, be destroyed or injured by the elements, or any other cause, as to be untenantable and unfit for occupancy, for a period of more than six (6) months, the said Tenant, its executors, administrators or assigns, may thereupon quit and surrender possession of said premises.

(b) Termination Upon Sale of Premises:
Notwithstanding any other provision of this Lease, Landlord may terminate this lease upon 120
days’ written notice to Tenant that the Premises have been sold.

ARTICLE XXXVII
RULES AND REGULATIONS

Section 37.01: Reasonable rules and regulations regarding the Property and the Demised Premises and Tenant’s use thereof, which may hereinafter be promulgated by Landlord, shall be observed by Tenant and Tenant’s employees, agents and business invitees, provided however that any such rules and regulations shall be uniformly enforced on all Tenants of the Property. In the event of any conflict between the Lease and the Rules and Regulations, the Lease shall prevail. Landlord reserves the right to rescind any rule or regulation promulgated hereafter and to make such other and further rules and regulations as in its reasonable judgment may from time to time be desirable for the safety, care, cleanliness and successful operation of the Property and the Demised Premises, and for the preservation of good order therein, which rules and regulations, when so made and reasonable notice thereof given to Tenant, shall have the same force and effect as if originally made a part of this Lease. Such other and further reasonable rules shall not, however, be inconsistent with the proper and rightful enjoyment by Tenant of the Demised Premises in the conduct of its business.

IN WITNESS WHEREOF, the Landlord has set his hand and seal and caused this Lease to be executed as of the date first written above.

WITNESSES:

EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS

By: Austin L. Nibbs, CEA, CGMA, Administrator
ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN  

On this 26th day of September, 2018, before me, personally appeared Austin L. Nibbs, CPA, CGMA, as the Administrator, to me known to be the person that executed the within and foregoing instrument and acknowledged that he executed the same as his free act and deed.

______________________________
NOTARY PUBLIC

Hester L. Griffin
GNP-10-15
at the Pleasure of the Lt. Governor
St. Thomas/St. John District

IN WITNESS WHEREOF, Tenant has set his hand and seal and caused this Lease to be executed as of the date first written above.

WITNESSES:

\[Signature\]

VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

\[Signature\]

By: Daryl Griffin
Executive Director

Reviewed for legal sufficiency:

BY: [Signature]

DATE: 9/26/18

Denise Rhymer, Esq.
Special Counsel
ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS | DIVISION OF ST. THOMAS AND ST. JOHN | SS

On this 26th day of September, 2018, before me, personally appeared Daryl Griffith, as Executive Director, to me known to be the person that executed the within and foregoing instrument and acknowledged that he executed the same as his free act and deed.

Valerie M. Francis
NOTARY PUBLIC

My Commission Expires: At The Pleasure Of The Lieutenant Governor
Notary Commission: GNP-01-94
St. Thomas, U.S. Virgin Islands
ADDENDUM NO. 1

LEASE AGREEMENT

between

the EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS

and

the VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

WHEREAS, on September 26, 2018, the Employees Retirement System of the Government of the Virgin Islands ("GERS") and the Virgin Islands Housing Finance Authority ("VIHFA") entered into a lease of premises identified as 3438 Kronprindsens Gade, GERS Complex-Ste 1, St. Thomas, Virgin Islands, 00802; and

WHEREAS, the aforementioned premises were leased to house the VIHFA’s Community Development Block Grant Disaster Recovery (“CDBG-DR”) program which was established to administer the CDBG-DR funds provided through the U.S. Department of Housing and Urban Development ("HUD") for the purpose of allocating crucial funding for recovery efforts involving housing, infrastructure, economic development, infrastructure and the prevention of further damage to affected areas; and

WHEREAS, under CDBG-DR program, all contracts to be funded under the CDBG-DR program requires the inclusion of the federal cross-cutting requirements as part of the conditions of the contract;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this Agreement, the parties hereto do covenant and agree as follows:

Section 1. The September 26, 2018 lease between the GERS and VIHFA is hereby amended to add the following federal cross-cutting provisions:

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development ("HUD"). In addition, Contractor/Subcontractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction. However, because of the landlord tenant relationship, the following sections are not deemed inserted or incorporated into the lease executed on September 26, 2018: Section 4. entitled Reporting Requirements; Section 7. entitled
Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms; Section 8. entitled Rights to Inventions Made Under A Contract or Agreement; Section 9. entitled Energy Efficiency; Section 10. entitled Title VI of The Civil Rights Act of 1964; Section 11. entitled Section 109 of The Housing and Community Development Act of 1974; Section 14. entitled Debarment, Suspension, and Ineligibility; Section 16. entitled Subcontracting; Section 18. entitled Indemnification; Sections 19. entitled “Copeland ‘Anti-Kickback’ Act”; Section 20. entitled Contract Work Hours and Safety Standards Act; Section 21. entitled Davis Bacon Act; Section 24. entitled Section 503 of The Rehabilitation Act of 1973; Section 25. entitled Executive Order 11246; Section 26. entitled Certification of Non- segregated Facilities; Section 28. entitled Lobbying; Section 29. entitled Bonding Requirements; Section 30. entitled Section 3 of The Housing and Urban Development Act of 1968; Section 31. entitled Fair Housing Act; Section 32. entitled Federal Funding Accountability and Transparency Act (Fiat); Section 33. entitled Procurement; Section 35. entitled Environmental Review; Section 36. entitled Lead Based Paint; Section 37. entitled Environmental Review Record; Section 39. entitled Duplication of Benefits; Section 41. entitled Affirmatively Furthering Fair Housing; Section 43. entitled Timely Distribution of Funds; Section 44. entitled Property Management and Distribution; Section 45. entitled Limited English Proficiency; Section 47. entitled Uniform Relocation Act; Section 48. entitled Residential Anti-Displacement and Relocation Assistance Plan; and Section 50. entitled Monitoring.

2. **STATUTORY AND REGULATORY COMPLIANCE**

Contractor/Subcontractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2017 (Pub. L. 115-56) and the Bipartisan Budget Act of 2018 (“BBA”), (Pub. L. 115-123), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. **BREACH OF CONTRACT TERMS**

VIHFA reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. **REPORTING REQUIREMENTS**

The Contractor/Subcontractor shall complete and submit all reports, in such form and according to such schedule, as may be required by VIHFA. The Contractor/Subcontractor shall cooperate with all VIHFA efforts to comply with HUD requirements and regulations pertaining to
reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

5. **ACCESS TO RECORDS**

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Subcontractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. **MAINTENANCE/RETENTION OF RECORDS**

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least three (3) years following the date of final payment and close-out of all pending matters related to this contract.

7. **SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The Contractor/Subcontractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit
Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

9.  **ENERGY EFFICIENCY**

The Contractor/Subcontractor shall comply with mandatory standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

10.  **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The Contractor/Subcontractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11.  **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor/Subcontractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12.  **SECTION 504 OF THE REHABILITATION ACT OF 1973**


The Contractor/Subcontractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13.  **AGE DISCRIMINATION ACT OF 1975**

The Contractor/Subcontractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.
14. **DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The Contractor/Subcontractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. **CONFLICTS OF INTEREST**

The Contractor/Subcontractor shall notify VIHFA as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Contractor/Subcontractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor/Subcontractor shall provide VIHFA any additional information necessary for VIHFA to fully assess and address such actual or potential conflict of interest. The Contractor/Subcontractor shall accept any reasonable conflict mitigation strategy employed by VIHFA, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. **SUBCONTRACTING**

When subcontracting, the Contractor/Subcontractor shall solicit for and contract with such Contractor/subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest.

(vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

The Contractor/Subcontractor represents to VIHFA that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.
The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

17. **ASSIGNABILITY**

The Contractor/Subcontractor shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of VIHFA.

18. **INDEMNIFICATION**

The Contractor/Subcontractor shall indemnify, defend, and hold harmless VIHFA and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor/Subcontractor in the performance of the services called for in this contract.

19. **COPELAND “ANTI-KICKBACK” ACT** (Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland “Anti-Kickback Act” of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable “Anti-Kickback” regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

(Applicable to construction contracts exceeding $2,000 and contracts exceeding $2,500 that involve the employment of mechanics or laborers)

The Contractor/Subcontractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations
issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. **DAVIS-BACON ACT**

(Applicable to construction contracts exceeding $2,000 when required by Federal program legislation)

The Contractor/Subcontractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

22. **TERMINATION FOR CAUSE** (Applicable to contracts exceeding $10,000)

If, through any cause, the Contractor/Subcontractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor/Subcontractor shall violate any of the covenants, agreements, or stipulations of this contract, VIHFA shall thereupon have the right to terminate this contract by giving written notice to the Contractor/Subcontractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor/Subcontractor under this contract shall, at the option of VIHFA, become VIHFA’s property and the Contractor/Subcontractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor/Subcontractor shall not be relieved of liability to VIHFA for damages sustained by VIHFA by virtue of any breach of the contract by the Contractor/Subcontractor, and VIHFA may withhold any payments to the Contractor/Subcontractor for the purpose of set-off until such time as the exact amount of damages due VIHFA from the Subcontractor is determined.

23. **TERMINATION FOR CONVENIENCE** (Applicable to contracts exceeding $10,000)

VIHFA may terminate this contract at any time by giving at least sixty (60) days’ notice in writing to the Contractor/Subcontractor. If the contract is terminated by VIHFA as provided herein, the Contractor/Subcontractor will be paid for the time provided and expenses incurred up to the termination date.

24. **SECTION 503 OF THE REHABILITATION ACT OF 1973** (Applicable to contracts exceeding $10,000)

Equal Opportunity for Workers with Disabilities

A. The Contractor/Subcontractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor/Subcontractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

i. Recruitment, advertising, and job application procedures;

ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

iii. Rates of pay or any other form of compensation and changes in compensation;

iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

v. Leaves of absence, sick leave, or any other leave;

vi. Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;

vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities; and selection for leaves of absence to pursue training;

viii. Activities sponsored by the contractor including social or recreational programs;

ix. Any other term, condition, or privilege of employment.

B. The Contractor/Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

C. In the event of the Contractor/Subcontractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

D. The Contractor/Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by
or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor’s/Subcontractor’s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor/Subcontractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor/Subcontractor may have the notice read to a visually disabled individual or may lower the posted notice so that it might be read by a person in a wheelchair).

E. The Contractor/Subcontractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor/Subcontractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

F. The Contractor/Subcontractor will include the provisions of this clause in every subcontract or purchase order in excess of $10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. EXECUTIVE ORDER 11246
(Applicable to construction contracts and subcontracts exceeding $10,000)


During the performance of this contract, the Contractor/Subcontractor agrees as follows:

A. The Contractor/Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/Subcontractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. The Contractor/Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor/Subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
C. The Contractor/Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

D. The Contractor/Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor/Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

F. The Contractor/Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

G. In the event of the Contractor's/Subcontractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor/Subcontractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

H. Contractor/Subcontractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such contractor/subcontractor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor/Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding $10,000).

The Contractor/Subcontractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any
location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor/Subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. **CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS**
(Applicable to contracts exceeding $100,000)

The Contractor and all its subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.

B. Agreement by the Subcontractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and
guidelines issued thereunder.

C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A)through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING (Applicable to contracts exceeding $100,000)

The Contractor/Subcontractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor/Subcontractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor/Subcontractor shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
29. **BONDING REQUIREMENTS**
(Applicable to construction and facility improvement contracts exceeding $100,000)

The Contractor/Subcontractor shall comply with VIHFA bonding requirements, unless they have not been approved by HUD, in which case the Contractor/Subcontractor shall comply with the following minimum bonding requirements:

1. **A bid guarantee from each bidder equivalent to five percent of the bid price.** The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. **A performance bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.** A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's/Subcontractor's obligations under such contract.

3. **A payment bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.** A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (As required by applicable thresholds)**

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The Contractor/Subcontractor agrees to send to each labor organization or representative of workers with which the Contractor/Subcontractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth
minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Contractor will not subcontract with any subcontractor where the subcontractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The Contractor/Subcontractor will certify that any vacant employment positions, including training positions, that are filled: (1) after the contractor/subcontractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor/Subcontractor’s obligations under 24 C.F.R. part 135.

F. Noncompliance with HUD’s regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

31. **FAIR HOUSING ACT**

Contractor/Subcontractor shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

32. **Federal Funding Accountability and Transparency Act (FFATA)**

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended, was signed with the intent of reducing wasteful government spending and providing citizens with the ability to hold the government accountable for spending decisions. 2 C.F.R. Part 170 outlines the requirements of recipients’ in reporting information on subawards and executive total compensation under FFATA legislation. Any non-Federal entity that receives or administers Federal financial assistance in the form of: grants, loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, assessed and voluntary contributions; and/or other financial assistance transactions that authorize the non-Federal entities’ expenditure of Federal fund, is subject to these requirements.

Prime contract awardees and prime grant awardees are required to report against subcontracts and subgrants awarded in the FFATA Subaward Reporting System (FSRS), the reporting tool for Federal prime awardees. This information reported will then be displayed on a public and searchable website: www.USASpending.gov.

33. **Procurement**

The Uniform Guidance procurement requirements (2 C.F.R. Part 200, Subpart D) went into effect on July 1, 2018. These requirements are applicable to CDBG-DR funded projects, or as provided by 83 Federal Register 5844 VI A(1)(b)(2) permits a state grantee to elect to follow its own procurement policy. These policies and procedures ensure that Federal dollars are spent fairly and encourage open competition at the best level of service and price. Standards for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services are outlined in the Procurement Manual and Contractual Requirements for CDBG-DR, available at www.cdbg-dr.pr.gov. VIHFA follows these standards to ensure goods and services are procured efficiently, at a fair price, and in compliance with all applicable Federal and Territorial laws and executive orders.

34. **Change Orders to Contracts**

Change orders are issued when the initial agreed upon pricing or work to be completed requires modification. First, the contractor must complete a Change Order Request Form. This form and supporting documentation must be delivered to the Project Manager for review. Each change order must have a cost analysis. Once the Project Manager approves the change order, it is returned to the contractor for execution. Change orders are only invoiced on the final draw and categorized as “change order.” The amount listed on the invoice must match the previously approved amount and must be cost reasonable. The Project Manager is responsible for verifying cost reasonableness. Verification
documentation for cost reasonableness becomes an attachment to the change order.

35. **Environmental Review**

Every project undertaken with Federal funds, and all activities related to that project, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 C.F.R. Part 58-ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any Federal funds can be accessed for program-eligible activities.

The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.

36. **Lead Based Paint**

All housing units assisted using CDBG-DR funds must comply with the regulations regarding lead-based paint found at 24 C.F.R. Part 35- LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES.

37. **Environmental Review Record**

The Environmental Officer is responsible for maintaining a written record of the environmental review process. The ERR for all programs contains all the governmental review documents, public notices and written determinations or environmental findings required by 24 C.F.R. Part 58-ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES as evidence of review, decision making and actions pertaining to a project of a recipient.

38. **Flood Insurance Requirements**

Grantees and subrecipients of Federal funding must ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605-NATIONAL FLOOD INSURANCE PROGRAM and 24 C.F.R. § 570.202- ELIGIBLE REHABILITATION AND PRESERVATION ACTIVITIES.

39. **Duplication of Benefits**

CDBG-DR funding intends to address the unmet needs of a community. The funds are
supplemental to primary forms of assistance, including private insurance and FEMA funds. To avoid duplicative assistance and potential de-obligation of funding, VIHFA must utilize all possible funding sources before applying CDBG-DR dollars to a project. CDBG-DR programs are typically implemented after temporary disaster assistance programs, such as FEMA Individual Assistance which are not intended to make someone whole.

The Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. § 5121 et seq., established the requirements for Duplication of Benefits (DOB) analysis.

40. **Anti-Fraud, Waste and Abuse Checks**

The Anti-Fraud, Waste and Abuse (AFWA) check is designed to identify discrepancies and risk-relevant issues in Applicant-provided information that may be indicative of fraud, waste, and/or abuse.

41. **Affirmatively Furthering Fair Housing**

The Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, et seq., dictates that grantees are required to administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Per the regulations of 24 C.F.R. § 570.601 and in accordance with Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 et seq., for each community receiving a grant under Subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee’s Assessment of Fair Housing (AFH) plan, conducted in accordance with the requirements of 24 C.F.R. §§ 5.150-5.180 (Affirmatively Furthering Fair Housing) and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

42. **Drug Free Workplace**

The Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 81, as implemented by 24 C.F.R. § Part 24, Subpart F. §§ 983.251-983.262, requires that any grantee other than an individual must certify that it will provide a drug-free workplace. Any grantee found in violation of the requirements of this act may be subject to suspension of payments under the grant, suspension or termination of the grant or suspension or debarment of the grantee. VIHFA guarantees compliance with this Act.

43. **Timely Distribution of Funds**

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), approved September 8, 2017 (Appropriations Act), as amended, requires that funds provided under the Act be expended within two (2) years of the date that HUD obligates funds to a grantee unless otherwise authorized via waiver of this requirement by the Office
of Management and Budget (OMB). The OMB waived the two (2) year expenditure requirement under 83 Fed. Reg. 40314 (Aug. 14, 2018); however, the provision to expend one hundred percent (100%) of the total allocation of CDBG-DR funds on eligible activities within six (6) years of HUD’s initial obligation of funds remains in effect. The six (6) year expenditure period commences with the initial obligation of funds provided under 83 Fed. Reg. 5844 (Feb. 14, 2018). Additionally, per 83 Fed. Reg. 5844, the provisions at 24 C.F.R. §§ 570.494 and 570.902, regarding timely distribution and expenditure of funds, are waived and an alternative requirement was established.

Furthermore, consistent with 31 U.S.C § 1555 and OMB Circular No. A-11 (2017), if the Secretary of HUD or the President of the United States determines that the purposes for which the appropriation was made have been carried out and no disbursement has been made against the appropriation for two (2) consecutive fiscal years, any remaining unobligated balance shall be canceled and will be made unavailable for obligation or expenditure for any purpose.

44. **Property Management and Distribution**

Regulations governing property management and distribution of real property, equipment, financial obligations and return of un-obligated cash post program closeout can be found in 24 C.F.R. § 570.506, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343 and 2 C.F.R. § 200.344(b). The standards of 24 C.F.R. § 570.506 apply to any real property under a CDBG award recipient’s control acquired in whole or in part with CDBG funds in excess of $25,000.00. The recipient may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.208 or if not, the recipient may either retain or dispose of the property for the changed use if the recipient’s CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

45. **Limited English Proficiency**

Executive Order No. 13166, signed on August 11, 2000, requires programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or deaf/hard of hearing. Fair access is ensured through the implementation of a Language Assistance Plan (LAP), which includes non-English-based outreach, translation services of vital documents, free language assistance services, and staff training. Vital documents are defined as depending on the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.
46. **Personally Identifiable Information**

In accordance with 2 C.F.R. § 200.303, regarding internal controls of a non-Federal entity, a grantee must guarantee the protection of all Personally Identifiable Information (PII) obtained. The program will enact necessary measures to ensure PII of all applicants is safeguarded as to avoid release of private information. If a contractor or employee should experience any loss or potential loss of PII, the program shall be notified immediately of the breach or potential breach.

47. **Uniform Relocation Act**

CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA or Uniform Act), as amended. 49 C.F.R. § Part 24 requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses.

48. **Residential anti-displacement and relocation assistance plan.** Per Section 104(d) of the Housing and Community Development Act of 1974 § 42.325

(a) Certification.

(1) As part of its consolidated plan under 24 CFR Part 91, the recipient must certify that it has in effect and is following a residential anti-displacement and relocation assistance plan.

(2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential anti-displacement and relocation assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

(b) Plan contents.

(1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in Parts 92 and 570 of this title, to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities.

(2) The plan shall provide for relocation assistance in accordance with § 42.350.

(3) The plan shall provide one-for-one replacement units to the extent required by § 42.375.

49. **Complaints and Appeals**

Citizen comments on VIHFA’s published Action Plan, any substantial amendments to the Action Plan, performance reports and/or other issues related to the general administration of CDBG-DR funds are welcomed throughout the duration of the grant. The Citizen
Participation Plan is posted as a stand-alone document at www.vihfa.gov. Complaints regarding fraud, waste, or abuse of government funds shall be addressed to the HUD Office of Inspector General Fraud Hotline by phone: 1-800-347-3735 or email: hotline@hudoig.gov.

50. Monitoring

As per CDBG regulation, 24 C.F.R. § 570.501(b), grantees of CDBG-DR funds are responsible for carrying out their programs to meet compliance with CDBG Program, statutory and regulatory requirements, including monitoring their project administrators, contractors and subcontractors. As such, throughout the application, planning, design, and implementation phase of the program, VIHFA will conduct internal monitoring of processes, procedures, policy, applications, planning, design, construction, and other applicable phases.

Section 2. All other requirement and provisions of Lease Agreement between the GERS and Virgin Islands Housing Finance Authority dated the 26th of September 2018, shall remain in full force and effect.

EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS

[Signature]

Austin L. Nibbs, CPA, CGMA,
Administrator

Reviewed for Legal Sufficiency:

[Signature]
Denise P. Rhymer, Esq.

Dated: 4th day of November, 2019
VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

Daryl Griffith
Executive Director