

PROFESSIONAL SERVICES CONTRACT

Between

VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

&

O'NEALE'S TRANSPORT, INC.

This **CONTRACT** (hereinafter referred to as the "Agreement") is made this 24TH day of AUGUST, 2021, in the Territory of the United States Virgin Islands, by and between the VIRGIN ISLANDS HOUSING FINANCE AUTHORITY, a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the Territory of the United States Virgin Islands, whose address is 3202 Demarara Plaza, Suite 200, St. Thomas, U.S. Virgin Islands 00802-6447 (hereinafter referred to as "VIHFA") and **O'NEALE'S TRANSPORT, INC.** a domestic limited liability company, whose address is 1A Wilfred Allick Container Port, Kingshill, St. Croix, U.S. Virgin Islands 00823 (hereinafter referred to as the "Contractor"). Contractor and the VIHFA may sometimes hereinafter be collectively referred to as the "Parties" and individually as a "Party."

WITNESSETH

WHEREAS, on September 6, 2017 and on September 19, 2017 Hurricane(s) Irma and Maria (2017 disasters) had a devastating impact on the United States Virgin Islands and caused significant destruction to housing, infrastructure, and the economy; and

WHEREAS, as a result of the 2017 disasters, the VIHFA has also been designated as the lead agency for administering the Community Development Block Grant Disaster Recovery ("CDBG-DR"), which is authorized under the Additional Supplemental Appropriations for Disaster Relief Requirements Act of No. 2017, Public Law (P.L.) 115-56, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, P.L. 115-123; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) awarded \$1,863,742,000.00 of CDBG-DR funds to the U.S. Virgin Islands in two separate tranches. On February 2, 2018, the first \$242,684,000 was announced for Tranche 1 and on April 10, 2018, an additional \$779,217,000 for Tranche 2; and

WHEREAS, on June 10, 2021 the VIHFA issued an Invitation for Bid, IFB-006-2021-STX to solicit bids from qualified and licensed trucking companies ("Respondents") to relocate the lumberyard from Sunshine Mall to the Alexander Henderson School on St. Croix, U.S. Virgin Islands.

WHEREAS, the VIHFA desires to enter into an agreement with the Contractor to provide relocation of the lumberyard, as determined by VIHFA, and accepts the Contractor's proposal; and

Contractor's Initials:



VIHFA Initials:



WHEREAS, the Contractor by its acceptance of the terms and conditions of this Contract is willing and capable to provide the services contemplated under this Contract; and

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

1. SCOPE OF WORK:

The Contractor shall be responsible for furnishing all labor, materials, tools, equipment, miscellaneous supplies and services necessary to relocate the lumberyard from the Sunshine Mall to Alexander Henderson School in Frederiksted, St. Croix. The Contractor will charge per load and trucks will be loaded by Contractor and/or VIHFA personnel.

2. TERM:

This Contract shall be for a period of twenty-one (21) calendar days from the Notice to Proceed. The contract terms begins from the date of the Notice to Proceed and shall terminate twenty-one (21) calendar days from the Notice to Proceed or when all the materials have been successfully relocated, whichever is first.

3. COMPENSATION:

- (a) VIHFA, in consideration of satisfactory performance of the services described above, shall pay the Contractor as compensation for the services rendered under this contract an amount not to exceed Two Hundred Thousand Dollars and 00/100 (\$200,000.00). Contractor shall submit invoices for work performed that conformed to the Pricing Schedule as outlined in Appendix A. Contractor may elect to submit invoices on a bi-weekly basis. Payment shall occur within 45 days of the receipt of Contractor's invoices, once invoice submissions are correct with all the required supporting documentation. Contractor shall submit invoices to VIHFA for payment via drawrequestcdbgdr@vihfa.gov.
- (b) VIHFA's performance and obligation to pay under this Contract is contingent upon the availability of applicable disaster recovery funds. VIHFA shall be the final authority as to the availability of funds for this Contract and as to what constitutes "applicable funding" to complete this Contract. If any such funds are not made available for the Contract purpose, such event will not constitute a default on VIHFA. VIHFA will notify Contractor in writing at the earliest possible time if funds are not appropriated or available. Provided, however, that as of the date of contract execution, VIHFA has determined that applicable grant funding has been appropriated, upon submission of payment requests from Contractor, VIHFA shall submit payment requests for review and draw of the funds. The cost for services rendered under this Contract to be paid is not eligible for reimbursement from any other funding source.

- (c) It is expressly understood and agreed that in no event shall the amounts to be paid by the VIHFA to the Contractor under this Contract exceed the rates and conditions made a part of this Contract unless expressly agreed to in writing.

4. REPRESENTATIONS, WARRANTIES, AND COVENANTS BY CONTRACTOR:

The Contractor represents, warrants, and covenants as follows:

- (a) Contractor is duly organized and existing and authorized, qualified and licensed to do business in the United States Virgin Islands.
- (b) Contractor will, during the term of this Contract, remain engaged in the business of trucking and transportation services and remain in good standing and qualified to do business under the laws of the Territory, including maintenance at all times of a valid V.I. business license.
- (c) Contractor will not cease doing business, dissolve or otherwise dispose of all or substantially all of Contractor's assets and will not voluntarily consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into Contractor.
- (d) Contractor has the power to execute, deliver and perform, and enter into the transactions contemplated by this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement.
- (e) The execution and delivery of this Agreement, the consummation of the transaction contemplated hereby and the fulfillment or compliance with the terms and conditions of this Agreement do not and will not conflict with or result in a breach of any of the terms, conditions, or provisions of any legal restrictions or any agreement or instrument to which the Contractor is now a party or by which Contractor is bound or constitute a default under any of the foregoing.
- (f) No information, statement, or report furnished in writing by the Contractor in connection with the negotiation of, or performance under, this Agreement and the consummation of the transactions contemplated hereby, contains any material misstatement of fact or omits to state a material fact that would make the information, statement or report misleading.

That Contractor has obtained all the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

5. CONTRACTOR RESPONSIBILITY:

Contractor shall supervise and direct the work of its employees and subcontractors. Contractor agrees to maintain the professional standards applicable to its profession. Contractor shall be responsible for its performance and that of its Subcontractors and Vendors.

Unless otherwise specified in this Contract, the Contractor will provide for and/or pay for all labor, materials, equipment, tools, machinery, transportation, and other goods, facilities, and services necessary for the proper execution and completion of the work within its scope.

6. PAYMENT PROCESS:

- a. Invoices shall be submitted within thirty (30) days after completion of the project.
- b. Compensation shall be invoiced as outlined in *Appendix A*. VIHFA will notify Contractor of any disputed charges within fifteen (15) days.
- c. Indemnification: Should the Contractor, after receipt of payment of invoices from the VIHFA fail to pay in a timely manner all persons who have fulfilled their obligations to perform labor and/or furnish materials in the prosecution of the work provided for herein, including by way of example Contractor's employees, subcontractors and furnishers of materials, machinery, equipment and fixtures, then Contractor agrees to indemnify VIHFA for said payment(s). Timely payments from Contractor to its Subcontractors and Vendors shall mean within three (3) business days of receiving payment from VIHFA.

7. AMENDMENTS:

The VIHFA may at any time with written notice to the Contractor, request changes within the scope of services of this Contract. Such changes may include modifications, additions or expansion of the contracted services. VIHFA may also amend this Contract to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons.

The Contractor may submit to the VIHFA a request for a change in the scope of work under this Contract. The Contractor will prepare a detailed written description of the change request and a proposed price of making such change. If VIHFA does not agree with the need for the change or with its price, the VIHFA can decline its acceptance with no cost obligation incurred. If the VIHFA agrees to the change, the VIHFA will negotiate with the Contractor and agree to a firm fixed price for the change. The Contractor will not be authorized to proceed until a properly executed amendment is in place.

Amendments to this Contract must be in writing and must be signed by a duly authorized representative of the parties to this Contract. Such amendments shall not invalidate this Contract, nor relieve or release the parties from their obligations under this Contract.

Notwithstanding the preceding, the Project Managers specified in Paragraph 6 and VIHFA may approve extensions to Deliverable Due Dates within the confines of the Performance Period.

8. PROFESSIONAL STANDARDS:

The Contractor will complete all work in accordance with standard practices in the warehouse management industry and the work shall conform with any and all law and regulations which apply to the work being performed, whether or not explicitly covered in the Contract. Contractor warrants that the final product of Contractor's work shall be fit for the purposes for which it is intended.

9. ASSIGNMENT:

The Contractor shall not sub-contract or assign any part of the services under this contract without the prior written approval of VIHFA.

10. NON-DISCRIMINATION:

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Such actions will include but shall 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.

11. RETENTION OF RECORDS:

All records shall be retained for a minimum of three (3) years from the termination or expiration of this Contract, unless notified in writing to extend the retention period. Records shall be made available, without charge, for review within ten (10) days of a request by the VIHFA.

12. NON-DISCLOSURE:

Except for disclosure to the VIHFA or its representatives, the reports, work papers and records, including information and data prepared or assembled by the Contractor under this Contract, shall be held confidential by the Contractor and shall not be made available or otherwise disclosed to any third party without the prior written approval of the VIHFA unless required to disclose information by order of a court of competent jurisdiction or other administrative authority.

13. TERMINATION:

A. Termination/Suspension for Cause

Notwithstanding any other provision of this Contract, either party may terminate this Contract in whole or in part with or without cause within fifteen (15) calendar days written notice specifying the effective date, if Contractor materially fails to comply with any material term of this contract, which shall include, but not be limited, to the following:

- i. The violation of any of the material terms or conditions of this Contract.
- ii. The making of any material misrepresentation by the Contractor in the furnishing of any information to the VIHFA.
- iii. Repeated failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and guidelines, policies or directives as may be applicable at any time;
- iv. Failure, due to Contractor's negligence or willful misconduct, of Contractor to fulfill in a timely and proper manner the obligations under this Contract;
- v. Continual submission by Contractor of reports to the GVI, VIHFA or HUD, or their auditors, reports that are incorrect or incomplete in any material respect, provided Contractor is given notice of said failure and fails to correct the same within a reasonable amount of time; or
- vi. Improper use of funds as provided for under this Contract.
- vii. If, through any cause set forth above, Contractor shall otherwise fail to fulfill its obligations under this Contract in a timely and proper manner, or if Contractor shall violate any of the material covenants or stipulations of this Contract, the VIHFA shall thereupon have the right to terminate this Contract by giving written notice to Contractor of such termination and specifying the effective date thereof, at least five (5) days prior to the effective date of said termination. Contractor shall be paid for all authorized Services properly performed prior to termination.

B. Termination for Convenience

VIHFA may terminate this Contract at any time by giving at least five (5) days prior written notice to the other Party. Contractor shall be entitled to payment for Services performed up to the date of termination contained within the notice, to the extent that the Services have been satisfactorily performed and are otherwise reimbursable under the terms of this Contract plus reasonable termination and demobilization costs incurred.

C. Termination Due to Unavailable Funding

The continuation of this Contract is contingent upon the appropriation and release of disaster recovery funds to fulfill the requirements of this Contract. Failure of the appropriate authorities to approve and provide an adequate budget to the VIHFA for fulfillment of the Contract terms shall constitute reason for termination for convenience of the Contract by either Party. Contractor shall be paid for all authorized Services properly performed prior to Termination plus reasonable termination and demobilization costs incurred.

14. PROCEDURE FOR TERMINATION:

The VIHFA may terminate this Contract by notifying the Contractor in writing at least five (5) days before the date upon which termination shall be effective. Upon termination and the effective date thereof, the Contractor shall utilize the time that reasonably may be required for the purpose of closing work hereunder. All charges incurred shall be paid by the VIHFA upon submission of a final invoice by the Contractor.

15. FORCE MAJEURE:

The Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God, windstorms, tsunamis, pandemics, hurricanes, or war, if the event is beyond the Contractor's reasonable control and the Contractor gives notice to the VIHFA immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events on their respective duties under the Contract. Contractor may be entitled to an equitable adjustment in schedules and unit prices in the foregoing circumstances. If the act of God or force majeure, or the resulting impacts, continues for more than fifteen (15) days that makes continued operations unfeasible; either party may terminate this Contract by giving the other party a further five (5) days written notice.

16. INSURANCE:

The Contractor represents and warrants that Contractor carries professional liability insurance in the amount usual and customary for warehouse management businesses of similar size, subject to normal deductibles, and covenants that Contractor will maintain such coverage as provided in the during the term of this Contract. Contractor shall also secure liability insurance covering acts, errors or omissions arising out of, or failure to render, professional services related to the Services under this Agreement. The Contractor's professional liability insurance policy shall name the VIHFA as an "Additional Insured". Evidence of public liability insurance shall be delivered to VIHFA within ten (10) working days after the award.

Upon failure of the Contractor to furnish, deliver and maintain such insurance, this contract, at the election of the VIHFA may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

Contractor shall include all Subcontractors as insureds under its policies and shall be responsible for verifying and maintaining the certificates provided by each Subcontractor. Subcontractors shall be subject to all of the requirements contained herein. VIHFA reserves the right to request copies of Subcontractor's certificates at any time.

17. INDEMNIFICATION:

The Contractor shall indemnify, defend, and hold harmless VIHFA, its property, consultants, employees, and the funding agency harmless from and against all claims, damages, losses, and expenses, direct, indirect or consequential, arising out of or resulting from the Contractor's Work, or otherwise caused in whole or in part by any negligent act or omission of the Contractor, its subcontractor(s), any person or organization directly or indirectly employed by them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of the negligence of such party.

18. FALSE CLAIMS:

The Contractor warrants that it shall not, with respect to this Contract, make or present any knowingly false claim upon or against VIHFA. The Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under the Virgin Islands law.

19. CONFLICT OF INTEREST:

The Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to perform under this Contract.

20. WARRANTY OF NON-SOLICITATION:

The Contractor expressly warrants that it has not employed any person to solicit or obtain this contract on its behalf, or cause or procure the same to be obtained upon compensation in any way, contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by it hereunder; and that it has not, in estimating the contract price demand, included any sum by reason of such brokerage, commission or percentage, and that all monies payable to it hereunder are free from obligation to any other person for services rendered, supposed to have been rendered, in the procurement of this contract. Breach of this warranty shall give VIHFA the right to terminate this Contract or, in its discretion, to deduct from the Contract Cost or consideration the amount of such commission, percentage, brokerage or contingent fees.

21. INDEPENDENT CONTRACTOR:

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status. The Contractor shall be responsible for the supervision of Contractor's employees, subcontractors, and authorized representatives, if any. All workers must be competent and skilled in their work.

22. LIABILITY OF OTHERS:

Nothing in this Contract shall be contained to impose any liability upon VIHFA, or to persons, firms, associations, or corporations engaged by the Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or to make VIHFA liable to any such persons, firms, associations or corporation for the acts, omissions, responsibilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for the Contractor, its servants, agents or independent contractors.

23. NOTICE:

Any notices required or permits to be given under this Contract shall be deemed sufficiently given or served if sent by certified mail, return receipt requested to the parties at the following addresses:

VIHFA: Daryl Griffith, Executive Director
Virgin Islands Water Housing Finance Authority
3202 Demarara Plaza, Suite 200
St. Thomas, U.S. Virgin Islands 00802-6447
Email: dgriffith@vihfa.gov

With Copy To: Attn: Antoinette Fleming, Director
VIHFA CDBG-DR Division
3202 Demarara Plaza, Suite 200
St. Thomas, U.S. Virgin Islands 00802-6447
Email: anfleming@vihfa.gov

Contractor: Attn: Keith C. O'Neale, Jr., President
O'Neale's Transport, Inc.
1A Wilfred Allick Container Port
Kingshill, St. Croix, U.S. Virgin Islands 00823
Email: koneale@oneales.com

Either party may, by like notice, at any time and from time to time, designate different addresses to which notices shall be sent. Notices given in accordance with these provisions shall be deemed received when mailed.

24. TAXES:

Contractor is responsible for payment of all applicable federal and local Territorial taxes, including

any taxes of any out-of-state employees who are currently assigned to this project and are working within the Territory.

- (a) **GROSS RECEIPT TAXES:** Title 33 V.I.C. Ch.3, §44, as amended¹, requires VIHFA, when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33 VIC Section 43(a) for each payment for Work performed in the Virgin Islands. It is agreed between the Parties that for the purposes of complying with Title 33, Ch. 3, Section 44 of the Virgin Islands Code, VIHFA shall withhold and forward to the Virgin Islands Bureau of Internal Revenue (“VIBIR”) such amount as required by the law at 33 VIC Section 43(a) or any amendments thereto.
- (b) The Contractor agrees that the calculation and payment of gross receipts taxes shall be its sole responsibility. The VIHFA shall not be responsible in any way for any miscalculation, or additional assessments by the VIBIR resulting from Work performed under this Contract. In the unlikely event any overpayment or underpayment is made to the VIBIR, the Contractor shall resolve such matter with VIBIR and inform the VIHFA of the resolution thereof.

25. FUND USE:

Contractor agrees not to use proceeds from this Contract to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law or is being considered by the Government of the U.S. Virgin Islands.

Contractor and all Subcontractors shall certify that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor and each subcontractor shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award.

26. WORKERS' COMPENSATION:

Contractor shall maintain Workers Compensation insurance as required by law.

27. GOVERNING LAW AND VENUE:

This Contract shall be governed by the laws of the United States Virgin Islands and venue for any action between the VIHFA and Contractor which relates to this Contract shall be in the United States Virgin Islands.

28. SEVERABILITY:

If any provision(s) of this Contract shall be held to be invalid, illegal, unenforceable or in conflict with the law of the United States Virgin Islands, it shall be regarded as stricken and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

29. ENTIRE AGREEMENT:

This Contract and any attachments thereto constitute the entire agreement between the parties hereto and all prior understandings or communications, written or oral, with respect to the project that is the subject of this Contract are merged herein. In the event of a conflict or inconsistency between any of the Contract Documents, the conflict or inconsistency shall be resolved by giving precedence in the following order:

1. This Contract and all amendments; then
2. Exhibits and Attachments hereto; then
3. The IFB and any Addenda hereto; and then
4. Terms of Contractor's proposal.

30. COUNTERPARTS:

This Contract may be signed in counterparts, each of which will be deemed an original.

IN WITNESS WHEREOF, the parties intending to be legally bound hereby caused these presents to be executed as of the day and date first above written.

WITNESSES:

[Signature]
Signature (1)

Sharon Williams
Print Name (1)

[Signature]
Signature (2)

Shantel James
Print Name (2)

CONTRACTOR:
O'NEALE'S TRANSPORT, INC.

[Signature]
Keith C. O'Neale, Jr., President

DATE: 8/24/21

ACKNOWLEDGMENT

TERRITORY OF THE U.S. VIRGIN ISLANDS)

DISTRICT OF ST. CROIX)ss:
)

On this 24 day of August, 2021, before me, the undersigned officer, personally appeared Keith C. O'Neale, Jr., who acknowledges himself to be the person whose name is subscribed within this agreement, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of O'NEALE'S TRANSPORT, INC.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

(SEAL)

[Signature]
Notary Public Commission
Expires:

DEBBIE HENRY
My Commission #: NP-157-18
Expires: August 31, 2022
St. Croix, USVI

Reviewed for Legal Sufficiency:
Denise Rhymer
Denise Rhymer, Esq.
Dated: 24th day of August, 2021

WITNESSES:

VIRGIN ISLANDS HOUSING FINANCE
AUTHORITY

Davis
Signature (1)

Daryl Griffith
Daryl Griffith, Executive Director

Nichelle Davis
Print Name (1)

DATE: 08/24/2021

Armstrong
Signature (2)

Darrah Armstrong
Print Name (2)

ACKNOWLEDGMENT

TERRITORY OF THE U.S. VIRGIN ISLANDS)
DISTRICT OF St. Croix)ss:
)

On this 24th day of August, 2021, before me, the undersigned officer, personally appeared DARYL GRIFFITH, who acknowledges himself to be the Executive Director of the Virgin Islands Housing Finance Authority, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of VIHFA as Executive Director.

IN WITNESS WHEREOF, I hereunto set my hand and seal.

(SEAL)



Claudia Parson

Notary Public Commission
Expires:
Claudia Y. Parson
Government Notary
St. Croix, U.S. Virgin Islands
GNP-13-20
Commission Expires At the Pleasure of
the Lieutenant Governor