

PROFESSIONAL SERVICES CONTRACT

This **CONTRACT** (hereinafter referred to as the "Contract") is made this 18th day of October, 2019, 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 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 **MB3 INC.**, a foreign corporation registered to do business in the U.S. Virgin Islands, whose address is 3975 Fair Ridge Drive Suite 425N, Fairfax, Virginia 22033 (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 \$ for Tranche 2; and

WHEREAS, under Public Law (P.L.) 115-56, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, P.L. 115-123, HUD the awarded CDBG-DR funds must be used for the purpose of assisting in addressing unmet needs from the 2017 disasters; and

WHEREAS, on April 5, 2019 the VIHFA issued a Request for Proposals, RFP 006-2019-DR-STT/STX to solicit proposals from qualified and licensed firms ("Respondents") to provide grants management systems for the VIHFA's CDBG-DR funded programs; and

WHEREAS, the Contractor submitted a proposal which VIHFA has accepted; and

WHEREAS, VIHFA selected the Contractor to provide a Grants Management system for VIHFA's CDBG-DR program as shown in the scope of work set forth in Section 1 of the Contract; and

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



WHEREAS, the VIHFA desires to enter into an agreement with the Contractor to provide a Grants Management system for VIHFA's CDBG-DR:

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 perform, or cause to be performed, the following services:

- (a) **Project Management:** Oversight of all activities provided under the resulting Contract(s) is to be performed by the Project Director. Day-to-day direction, guidance, and decision-making is to be performed by the Project Director and/or Project Manager
- (b) **Weekly Meetings:** VIHFA may require formal weekly conferences via teleconference or in person, at VIHFA's election, to discuss the progress of any work, problems encountered and proposed solutions
- (c) **Reporting:** VIHFA will require a monthly progress report describing the status of all work completed in the preceding month and/or all work requiring completion within ten (10) business days following month end
- (d) **Training:** The respondent shall provide training materials and instruction manuals on the system implemented

Additionally, the software solution must, at a minimum, provide the following:

- a) Provide an end user portal to allow for the uploading of supporting documentation
- b) Provide historic timestamps, so CDBG-DR staff can verify when a document was uploaded
- c) Ability to build and customize web forms, which can be done by the Contractor, drawing from the Customization hour balance in Task (2): Tailor Recommended Software Solution Structure
- d) Ability to map data from web form fields to specific fields within the Grant Management database, which can then be used for CDBG-DR reporting requirements
- e) Provide API access to the Grant Management database, which can be done by the Contractor, drawing from the Customization hour balance in Task (2): Tailor Recommended Software Solution Structure

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- f) Data access from 3rd party reporting applications, which will be utilized for in house reporting requirements
- g) Accessible from various client devices (desktop and mobile devices) via a web browser and/ or mobile application
- h) Provide safe and secure access, while providing the latest technological security measures to end users accessing the application remotely or locally
- i) Ability for Contractor to manage and control the underlying technical infrastructure, including network, servers, operating systems and storage
- j) Ensure that system data is secure and encrypted based on generally accepted industry standards
- k) Ability to track other grant awards and other relevant funding, which can be done, however this license currently only includes CDBG-DR
- l) Ability to transfer system ownership and management or export electronic data for potential use in another database when contractual arrangement ends as per the terms in the Contractor's software license agreement terms attached as Appendix D.
- m) Ability to run reports, configuring columns, sorting, and filtering, and save these reports as presets for future use
- n) Provide capability to export reporting data or reports from grants management system to Microsoft Excel
- o) Support multiple logins to VIHFA staff for purposes of review, access and management of documentation.
- p) Allow producing customized front-end reports and graphics, which can be done by the Contractor, drawing from the Customization hour balance in Task (2): Tailor Recommended Software Solution Structure
- q) Provide an online applicant portal which is accessible 24 x 7
- r) A mechanism by which documents can be uploaded and attached to the electronic application
- s) Equipped with native Document Management System (DMS) and/ or be interoperable with a third party DMS
- t) Allow for uploading documents and image files, including those that are compressed in ZIP format
- u) Provide Key Performance Indicators (KPI), which allows end users/ Systems Analysts to track milestones and be able to view real-time statistics. KPI's alerts can be sent via email, and / or bolded popups when a user logs into the system

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- v) Provide an online reference guide for the system that will be easily accessible to users. The reference guide will document the system, provide step-by-step instructions for common tasks, and contain more detailed articles to assist users and the IT staff
- w) Provide rights and permissions capabilities to allow end user and group access to certain areas within the application/ database, for security purposes
- x) Provide a detailed historical/ conversation log including date, time and conversation detail
- y) Ability to support multiple workflows
- z) Used successfully in previous FEMA, CDBG, and/or CDBG-DR programs. Any items that are not specifically requested here that are a part of previous implementations, should be included in the proposal response
- aa) The system must be nimble. The respondent should discuss the turnaround time to implement changes to the system and reflect changing program requirements
- bb) Possess the capability to integrate or has an embedded GIS Mapping widget, , which can be done by the Contractor, drawing from the Customization hour balance in Task (2): Tailor Recommended Software Solution Structure
- cc) Support multiple CDBG-DR programs and should allow seamless capabilities to switch between the functional areas
- dd) Support electronic approvals and be able to keep historical digital logs for auditing purposes
- ee) Possess built in control mechanisms, which support VIHFA's program workflows and ensures certain requirements are met before moving to the next step within the process
- ff) Able to utilize electronic communications services such as email, for communications and/ notifications purposes

2. TERM:

This Contract shall begin on or about 18th day of October, 2019 or the date on which the last Party has signed the Contract, whichever is later, and shall end on or about 18th day of October 2021. The VIHFA may elect to exercise the option for up to two (2) additional two (2) year terms, subject to Contractor's satisfactory performance. VIHFA will exercise this option by providing Contractor written notice no less than sixty (60) days prior to the expiration of the first contract term or the first additional term, as applicable.

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 Million Two Hundred Seven Thousand Five Hundred Dollars and 00/100

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(\$2,207,500.00). Contractor shall submit monthly invoices for work performed that conformed to the Project Timeline as outlined in Appendix A.

- (b) 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.
- (c) VIHFA's obligation to pay under this Contractor for services performed 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. Payment for services rendered under this Contract is not eligible for reimbursement from any other funding source.

4. REPRESENTATIONS, WARRANTIES, AND COVENANTS BY CONTRACTOR:

The Contractor represents, warrants, and covenants as follows:

- (a) Contractor is a foreign corporation registered to do business in the U.S. Virgin Islands.
- (b) Contractor will, during the term of this Contract, remain engaged in the business of providing a Grants Management System and Contractor will 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.

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- (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.
- (g) 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 in this Contract.

6. PAYMENT PROCESS:

- a. Invoices shall be submitted on a monthly basis.
- b. Compensation shall be invoiced as outlined in *Appendix B*. Full or partial payment will be made upon satisfactory completion of each invoice as accepted by the Project Manager. 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.
- d. In the event that performance standards required herein are not being met by the Contractor, VIHFA will notify the vendor in writing of such performance deficiencies. Upon receipt of a written letter, the Contractor would be required to prepare and submit a proposal to VIHFA outlining ways to correct the problem and improve service. Once

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the proposal is submitted and accepted by the VIHFA, the Contractor would have thirty (30) days to improve its performance. If after thirty (30) days the Contractor's performance does not improve, the VIHFA may begin assessing a liquidated damage of \$150.00 per day until the performance standards are met.

- e. If VIHFA does not issue a payment of an invoice, through no fault of the Contractor, within fifteen (15) days after the date established in the Contract, then the Contractor may, upon three additional days' notice to VIHFA, stop the Work until payment of the amount owing has been received.

7. AMENDMENTS:

- a. 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.
- b. 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 the Contractor's proposed price, VIHFA reserves the right to decline its acceptance with no cost obligation incurred. If VIHFA agrees to the change, 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.
- c. 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.
- d. Notwithstanding the preceding, the specified Project Managers 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 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.

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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. The previous sentence does not apply to Contractor's affiliates, who may perform any part of the services under this contract; Contractor will be responsible for any services performed by Contractor's affiliates.

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 shall 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 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 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, VIHFA may, after giving reasonable written notice specifying the effective date, may suspend or terminate this Contract in whole or in part 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.

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- 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 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. If, through any cause, 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 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 thirty (30) 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

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.

C. Termination Due to Unavailable Funding

VIHFA reserves the right to terminate the Contract if funding becomes unavailable. Contractor shall be paid for all authorized Services properly performed prior to Termination plus reasonable termination and demobilization costs incurred.

14. PROCEDURE FOR TERMINATION:

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VIHFA may terminate this Contract at any time by giving at least sixty (60) 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.

15. FORCE MAJEURE:

The Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God, 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.

16. INSURANCE:

The Contractor represents and warrants that Contractor carries professional liability insurance in the amount usual and customary for work in the industry subject to normal deductibles, and covenants that Contractor will maintain such coverage as provided in RFP 006-2019-DR-STT/STX 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. LIABILITY AND INDEMNIFICATION:

The Contractor shall indemnify, defend, and hold harmless VIHFA, its property, consultants, employees, and the funding agency ("Indemnified Parties") harmless from and against all claims, damages, losses, and expenses, direct, indirect or consequential, arising out of or resulting from the Contractor's Work, but such obligation to indemnify, defend and hold harmless is limited to the extent caused by the negligence of the Contractor, except as otherwise limited in this Agreement. This

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indemnification clause is not intended to convert a claim based solely upon a breach of contract theory into a tort claim.

Contractor shall not be required to indemnify, defend, or hold harmless the Indemnified Parties for all claims, damages, losses, and expenses, direct, indirect or consequential and causes of action of whatsoever character which are premised, in whole or in part, on the alleged acts and/or omissions of the Indemnified Parties.

Notwithstanding any contrary provision in this agreement, the Contractor's liability for any and all claims arising out of or in connection with the agreement or the services shall not exceed, in the aggregate, three times the fees actually paid by VIHFA to Consultant within the twelve (12) months preceding the event giving rise to the claim under this Agreement. Such limitation of liability shall apply even if the liability asserted is based on negligence (whether active, passive, sole, concurrent or gross), breach of duty (whether statutory, contractual or otherwise) or any other fault of consultant or any other person or entity, and regardless of whether the claim is based in contract, tort, strict liability or otherwise; provided, however, for the avoidance of doubt, that such limitation of liability shall not apply if the liability asserted is based on fraud or willful misconduct.

18. FALSE CLAIMS:

The Contractor warrants that she shall not, with respect to this Contract, make or present any 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 she 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.

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

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

Contractor: MB3 Inc.
Attn: Angele Romig, Executive Vice President
2021 Lakeshore Drive, Suite 500
New Orleans, LA, 70122
Email: aromig@grinc.com

With Copy To: MB3 Inc.
Attn: Legal Department (Contracts)

Contractor's Initials: 

VIHFA Initials: 

3975 Fair Ridge Drive Suite 425N
Fairfax, Virginia 22033
Email: rcampbell@gcrinc.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. 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 VIHFA of the resolution thereof.

25. VIHFA FURNISHED RESOURCES:

The VIHFA will provide specific project information to Contractor necessary to complete Services described herein. All records, reports, documents and other material delivered or transmitted to Contractor by the VIHFA shall remain the property of the VIHFA and shall be returned by Contractor

¹ (a) The Government of the Virgin Islands, including its instrumentalities, agencies and public corporations, when making a payment as defined under subsection (b) of this section, to any person, partnership, firm, corporation, or other business association that is subject to the payment of gross receipts tax under the provisions of this title, shall deduct and withhold from such payment gross receipts tax equal to four percent of such payment. Such tax shall be paid to the Virgin Islands Bureau of Internal Revenue within ten days of the last day of the calendar month during which such tax was withheld on forms to be provided by the Virgin Islands Bureau of Internal Revenue.

(b) For purposes of withholding under this section, “payment” is defined as the following:

- (1) any single payment of at least \$30,000; and
- (2) any payment pursuant to a contract providing for a total expenditure of \$225,000 or more.

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to the VIHFA, upon request, at termination, expiration or suspension of this Contract.

All records, reports, documents, or other material or data, including electronic data, related to this Contract and/or obtained or prepared by Contractor, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the Services contracted for herein shall become the property of the VIHFA, and shall, upon request, be returned by Contractor to the VIHFA at termination or expiration of this Contract. Cost incurred by Contractor to compile and transfer information for return to the VIHFA shall be billed on a time basis, subject to the maximum amount of this Contract. Software and other materials owned by Contractor prior to the date of this Contract and not related to this Contract shall be and remain the property of Contractor.

Nothing in this paragraph or Contract will apply to Contractor's preexisting Software or modifications thereto, which are and will remain the sole and exclusive property of the Contractor. VIHFA will receive a perpetual license to such Software in accordance with the terms of Appendix D, with support (including hosting and maintenance) during the term of this Contract.

26. 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

27. CONFIDENTIALITY OF DATA:

All financial, statistical, personal, technical and other data and information relating to the VIHFA's operation, or gathered pursuant to the Scope of Work to be performed, which are designated confidential by the VIHFA or in the regular course of business, and made available to Contractor in order to carry out the Contract, or which become available to Contractor in carrying out the Contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the VIHFA. The identification of all such confidential data and information as well as the VIHFA's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the VIHFA in writing to Contractor. If the methods and procedures employed by Contractor for the

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protection of Contractor's data and information are deemed by the VIHFA to be adequate for the protection of VIHFA's or applicant's confidential information, such methods and procedures may be used, with the written consent of the VIHFA, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in Contractor's possession, is independently developed by Contractor outside the scope of this Contract, is obtained from other public agencies, or is rightfully obtained from third parties.

All of the reports, information, and data prepared or assembled by Contractor under this Contract are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the VIHFA or applicant to the CDBG-DR Housing Program. This does not extend to information that was obtained from the public domain such as public agencies or sources of information available to the general public.

- i. Contractor must implement procedures to ensure the protection and confidentiality of all data, files, and records involved with this Contract.
- ii. Except as necessary to fulfill the terms of this Contract and with the permission of VIHFA, Contractor shall not divulge to third parties any confidential information obtained by Contractor or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the Territory or VIHFA.
- iii. No member, officer, or employee of Contractor, or agents, Subcontractor, member of the governing body of Contractor or the locality in which the program is situated, or other public official who exercises or has exercised any functions or responsibilities with respect to this Contract during his or her tenure agrees not to use or disclose any information concerning a recipient of services under this Contract for any purpose not in conformity with state and Federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.
- iv. Contractor shall notify VIHFA in writing of any disclosure of unsecured confidential information of VIHFA by Contractor, its employees, agents or representatives which is not in compliance with the terms of the Contract (of which it becomes aware). Contractor also shall report to VIHFA any Security Incidents of which it becomes aware, including those incidents reported to Contractor by its sub-contractors or agents. For purposes of this Contract, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of VIHFA's or applicant's information in Contractor's possession or electronic interference with VIHFA operations; however, random attempts at access shall not be considered a security incident. Contractor shall make a report to VIHFA not more

Contractor's Initials: ACP

VIHFA Initials: [Signature]

than seven (7) business days after Contractor learns of such use or disclosure. Contractor's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by VIHFA's Information Security Manager.

28. COPYRIGHT:

No materials, to include but not limited to reports, maps, or documents produced as a result of this Contract, in whole or in part, shall be available to Contractor for copyright purposes. Any such material produced as a result of this Contract that might be subject to copyright shall be the property of the VIHFA and all such rights shall belong to the VIHFA.

Nothing in this paragraph or Contract will apply to Contractor's preexisting Software or modifications thereto, which are and will remain the sole and exclusive property of the Contractor. VIHFA will receive a perpetual license to such Software in accordance with the terms of Appendix D, with support (including hosting and maintenance) during the term of this Contract.

29. WORKER'S COMPENSATION:

Contractor shall maintain Workers Compensation insurance as required by law.

30. 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.

31. 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.

32. 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

Contractor's Initials: ACA

VIHFA Initials: 

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 RFP and any Addenda hereto; and then
4. Terms of Contractor's proposal.

33. COUNTERPARTS:

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

Contractor's Initials: ACA

VIHFA Initials: [Signature]

Reviewed for Legal Sufficiency:
D. Rhymer
Denise Rhymer Esq.
Dated: 16 day of October, 2019

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:

CONTRACTOR:

MB3 Inc.

Benjamin Billings
Signature (1)
Benjamin Billings
Print Name (1)

Angele C Romig
NAME: Angele C. Romig

Ann C Grob
Signature (2)
Ann C Grob
Print Name (2)

ACKNOWLEDGMENT

STATE OF LOUISIANA)
PARISH) ss:
COUNTY OF ORLEANS)

On this 11th day of October, 2019, before me, the undersigned officer, personally appeared Angele Romig, who acknowledged himself to be the person whose name is subscribed to the within trust agreement, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of MB3 Inc.

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

RICHARD U. CAMPBELL
NOTARY PUBLIC
BAR NO. 32833
STATE OF LOUISIANA

(SEAL)

Contractor's Initials: ACP

VIHFA Initials: [Signature]

EXHIBITS AND ATTACHMENTS

- Appendix A. Project Timeline
- Appendix B. Project Budget
- Appendix C. HUD Provisions
- Appendix D. Software License Terms
- Exhibit 1. MB3 INC. Virgin Islands Business License
- Exhibit 2. Insurance Certificates (Worker's Compensation & Liability Insurance)
- Exhibit 3. Debarment and Suspension Certification

Contractor's Initials: ACM

VIHFA Initials: [Signature]

APPENDIX A: PROJECT TIMELINE

MB3 will be offering configuration and customization of its EMGrantsPro, which is designed to facilitate efficient and compliant management of federal recovery grants. The following is a implementation plan and timelines of the EMGrantsPro system.

The estimated implementation timeline is 13 weeks (commencing from the date of contract execution) as follows:

Phase	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14
Task (1)														
Task (2)														
Task (3) (Ongoing Support & Future Customizations)														

The following are specific tasks items under the implementation plan and training / support services:

Task (1): Deploy Recommended Software Solution and Provide User Licenses (30 days after contract execution)

Kick-off & Planning (week 1)

Meeting with key project stakeholders to provide a general overview

Build Sites (Dev, Test, Live) (weeks 1 & 2)

Install software in all 3 environments

Setup domain for Live site

Analysis & Configuration (weeks 2 - 4)

Interactive sessions to understand the business processes, review system functionality and identify both configuration and customization items to align the system with the department's needs

- Analysis of current processes to identify ways to improve efficiency
- Initial setup of system administrator and module settings/options within the product. Includes:
 - workflow paths (steps & recipients)
 - groups/roles/permissions
 - system settings
 - email notifications
 - document types
 - default forms

Training (weeks 4 & 5)

- Provide system training for System Administrators and State users

Contractor's Initials: ACP

VIII FA Initials: 

Task (2): Tailor Recommended Software Solution Structure (90 days after contract execution)
During this phase customizations will be worked on in order of priority based on how critical they are to the business functions that the agency performs and whether or not there's a temporary workaround. It's extremely common to schedule some customizations for after the system is Live and to work on them during the ongoing support period.

Gather Requirements for Customization, Integrations & Data Importing (week 5)

- Identify any key Customization needs (items deemed critical to Go Live)
- Determine requirements and specifications for system integrations
- Identify Data Importing requirements

Customization, Integrations & Data Importing (weeks 6 - 10)

- Complete key Customization of any client-specific requirements. Includes:
 - document templates (i.e. letters, payment documents)
 - form fields (i.e. custom project application form fields)
 - email notifications
 - reports
 - system integrations

● Complete Data Importing of past/ongoing Grants from Excel templates. Includes:

- Grants (if > 10, otherwise can be manually entered)
 - Applicants
 - Accounts
 - Project versions
 - Financial information (Payments, RFRs/Expenses)
- Deploy Customizations in test environment
 - Update Configuration Settings if needed (done on test/live sites)

User Acceptance Testing (UAT) (week 11)

- Users are trained and equipped to test the system in the test environment

Updates Based on UAT (week 12)

- Address any key User Acceptance Training results

Deploy Customizations & Import Data (week 13)

Task (3): Continued Support of Software Solution

Support & Customization

- Training as requested
- Assistance with support requests
- Patch regularly with system updates
- Customization of system as required and budget permits (not included in support fee)

Liquidated Damages: The Contractor shall pay to VIHFA, as liquidated damages, \$150.00 for each calendar day that a required deliverable is late until deemed in compliance, subject to a maximum penalty of \$10,000.00 per occurrence. Liquidated damages may be assessed at the sole discretion of VIHFA. For the purpose of calculating such liquidated damages, a grace period of thirty (30) days shall be observed and the contracts schedule shall be extended by any additional time or delays outside the control of the Contractor cause by an act of commission, omission or delay of VIHFA. VIHFA may deduct and retain out of the monies, which may become due hereunder the amount of any such

Contractor's Initials: ACM

VIHFA Initials: [Signature]

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liquidated damages, and in case the amount which may become due hereunder shall be less than the amount of the liquidated damages due to VIHFA, the Contractor shall be liable to pay the difference.

Contractor's Initials: ACA

VIHFA Initials: 

APPENDIX B: PROJECT BUDGET

Contract Term 1 - Section 1					
<i>Grants Management System:</i>	Unit	Monthly Rate	Unit Rate	Estimated Timing	Estimated Total
Task (1): Deploy Recommended Software Solution and Provide User Licenses	1	N/A	N/A	N/A	\$500,000
User Licenses	23	N/A		N/A	Unlimited users included
Onsite Training	1	N/A	N/A	N/A	\$60,000 (\$15,000/wk x 4weeks)
Remote Training	1	N/A	N/A	N/A	Included in Task (3)
Task (2): Tailor Recommended Software Solution Structure (Customizations)	1	N/A	N/A	N/A	Estimated \$600,000
Task (3): Support of Software Solution (includes Hosting)	1		N/A	24 months	\$240,000
Additional User Licensing	5	N/A		N/A	Unlimited users included
TOTAL – Grants Management System	N/A	N/A	N/A	N/A	\$1,400,000

Contract Term 1 – Section 2					
<i>Potential for Additional Services outside of Lump Sum*:</i>	# of Staff	Hourly Rate		Estimated Hours	Estimated Total
Project Director	1	\$225	N/A	250	\$56,250
Project Manager	2	\$175	N/A	250	\$87,500
System Designer	N/A	N/A	N/A	250	N/A
System Developer	N/A	N/A	N/A	250	N/A
Database Administrator	1	\$150	N/A	250	\$37,500
Business Analyst	2	\$175	N/A	250	\$87,500
			N/A	250	
SUBTOTAL – Potential Additional Services	N/A	N/A	N/A	N/A	\$268,750

Contract Term 2 - Section 1					
<i>Grants Management System:</i>	Unit	Monthly Rate	Unit Rate	Estimated Timing	Estimated Total
Task (1): Deploy Recommended Software Solution and Provide User Licenses	1	N/A	N/A	N/A	N/A
User Licenses	23	N/A		N/A	Unlimited users included
Onsite Training	1	N/A	N/A	N/A	\$30,000 (\$15,000/wk x 2 weeks)
Remote Training	1	N/A	N/A	N/A	Included in Task (3)
Task (2): Tailor Recommended Software Solution Structure (Customizations)	1	N/A	N/A	N/A	N/A

Contractor's Initials: *ACP*

VHIFA Initials: *[Signature]*

Task (3): Support of Software Solution (includes Hosting)	1		N/A	24 months	\$240,000
Additional User Licensing	5	N/A		N/A	Unlimited users included
TOTAL – Grants Management System	N/A	N/A	N/A	N/A	\$270,000
Contract Term 2 – Section 2					
<i>Potential for Additional Services outside of Lump Sum*:</i>	# of Staff	Hourly Rate		Estimated Hours	Estimated Total
Project Director	1	\$225	N/A	250	\$56,250
Project Manager	2	\$175	N/A	250	\$87,500
System Designer	N/A	N/A	N/A	250	N/A
System Developer	N/A	N/A	N/A	250	N/A
Database Administrator	1	\$150	N/A	250	\$37,500
Business Analyst	2	\$175	N/A	250	\$87,500
			N/A	250	
SUBTOTAL – Potential Additional Services	N/A	N/A	N/A	N/A	\$268,750

Contract Term 3 - Section 1					
<i>Grants Management System:</i>	Unit	Monthly Rate	Unit Rate	Estimated Timing	Estimated Total
Task (1): Deploy Recommended Software Solution and Provide User Licenses	1	N/A	N/A	N/A	N/A
User Licenses	23	N/A	N/A	N/A	Unlimited users included
Onsite Training	1	N/A	N/A	N/A	\$30,000 ((\$15,000/wk x 2wks)
Remote Training	1	N/A	N/A	N/A	Included in Task (3)
Task (2): Tailor Recommended Software Solution Structure (Customizations)	1	N/A	N/A	N/A	N/A
Task (3): Support of Software Solution (includes Hosting)	1	\$10,000	N/A	24 months	\$240,000
Additional User Licensing	5	N/A	N/A	N/A	Unlimited users included
TOTAL – Grants Management System	N/A	N/A	N/A	N/A	\$270,000
Contract Term 3 – Section 2					
<i>Potential for Additional Services outside of Lump Sum*:</i>	# of Staff	Hourly Rate		Estimated Hours	Estimated Total
Project Director	1	\$225	N/A	250	\$56,250
Project Manager	2	\$175	N/A	250	\$87,500
System Designer	N/A	N/A	N/A	250	N/A
System Developer	N/A	N/A	N/A	250	N/A
Database Administrator	1	\$150	N/A	250	\$37,500
Business Analyst	2	\$175	N/A	250	\$87,500
			N/A	250	
			N/A	250	
			N/A	250	
SUBTOTAL – Potential Additional Services	N/A	N/A	N/A	N/A	\$268,750

Contractor's Initials: ACP

VIIIFA Initials: 

*Note: Any additional allowance of services for Grants Management System will be invoiced to VIHFA upon support, modification, or additional development requests from VIHFA. Only approved tasks by VIHFA may be invoiced as part of this section of the price estimate. Any work under this Section will be invoiced based upon hours worked by staff and the hourly rates agreed to with VIHFA. Hours presented are only for comparison and costing purposes only. Actual hours will be based on the need determined by VIHFA and should not be interpreted to guarantee any minimum amount of hours, but cannot exceed the referenced hours denoted.

Contractor shall invoice for the items outlined above as follows, not to exceed the total amount per the Project Budget.

a) Section 1: Project costs to be billed based on delivery of deliverables as outlined here:

- 75% of the \$500,000 License Fee to be billed once domain has been established and the agency is able to see evidence that a Live site exists (Login Page, Home Screen and Out of the box web forms for the various modules)
- 25% of the \$500,000 License Fee to be billed once agency users are able to login and use the system to start performing any of their business functions within the system
- On Site Training to be billed at the end of each week where training has taken place
- Tailoring Recommended Software (Customizations) will be quoted and will need to be approved by the Agency before work begins. The agency will have 2 weeks after the customization is completed to perform User Acceptance Testing. The Contractor has the option to bill for 80% of each Customization once it's available for UAT and the other 20% once the Customization is Live.

Documentation: Invoices & other supporting documentation to demonstrate deliverable delivery and costs incurred for each deliverable.

b) Section 2: Personnel costs to be billed on an hourly basis x rate (per personnel)

Documentation: Timesheets indicating Name of Person, Title/Labor category, hours worked (by day), bill rate and description of work provided (to potentially include applicant identifier)

Contractor's Initials: ACB

VIHFA Initials: [Signature]

APPENDIX C: HUD PROVISIONS

Contractor shall ensure that all its, and all Subcontractor's, activities, under this Contract shall be conducted in conformance with, but not limited, to the following federal provisions, as applicable: 2 Code of Federal Regulations (CFR) Part 200, 29 CFR Part 95, and all other applicable federal regulations.

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.

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.

Contractor's Initials: ACB

VIHFA Initials: [Signature]

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).

Contractor's Initials: ACP

VIHFA Initials: 

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 shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 94), as amended, and any applicable regulations.

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

Contractor's Initials: ACM

VIHFA Initials: [Signature]

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

Contractor's Initials: ACP

VIHFA Initials: [Signature]

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)

Contractor's Initials: ACM

VIHFA Initials: 

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 the 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 to the VIHFA from the Subcontractor is determined.

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

The 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)

The Contractor/Subcontractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

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;

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- 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; and
 - 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)

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The Contractor/Subcontractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

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

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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.

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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.

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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 work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall

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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. Please visit http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11868.pdf for more information.

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

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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.

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

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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, Subrecipient 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

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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.

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 FR 40314; 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 FR 5844. Additionally, per 83 FR 5844, the provisions at 24 C.F.R. § 570.494 and 24 C.F.R. § 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

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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.

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VIHFA – MB3 Inc.
Grants Management System
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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.

Contractor's Initials: ACD

VIHFA Initials: 

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APPENDIX D: SOFTWARE LICENSE TERMS

[See attached]

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SOFTWARE LICENSE AGREEMENT

► EMGrantsPro



SALES AND SUPPORT:

7512 Dr. Phillips Blvd., Suite 50-112 <http://mb3online.com>
Orlando, FL 32819 info@mb3online.com

Phone: 321.206.3784
Fax: 321.206.3779

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SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT, including the Exhibits hereto ("Agreement"), effective as of _____ ("Effective Date") is hereby made by and between MB3 INC., a Delaware corporation ("Licensor"), and the customer identified on page 9 below ("Licensee").

1. DEFINITIONS

- 1.1 "Confidential Information" shall have the meaning given that term in Section 13.1.
- 1.2 "Data Processing Centers" shall have the meaning given that term in Section 2.2.
- 1.3 "Documentation" shall mean written materials or graphic files that are displayed or printed and that relate to and support the Software.
- 1.4 "Initial Installation Date" shall have the meaning given that term in Section 8.
- 1.5 "Software" shall mean Licensor's proprietary software described in Exhibit A, including any Upgrades thereto during the Warranty Period. Software will not include any Upgrades after the Warranty Period, unless agreed to by Licensor at its sole discretion. Licensor agrees to negotiate in good faith with respect to providing future Upgrades.
- 1.6 "Upgrades" shall mean new product versions or releases, enhancements, improvements, customizations or updates to the Software made by Licensee, including, without limitation, those made at the request of Licensee or otherwise.
- 1.7 "Warranty Period" shall mean the 3-month period beginning on the Initial Installation Date, without extensions thereto as a result of the installation of an Upgrade (except as specifically provided in Exhibit B).

2. OWNERSHIP; GRANT OF RIGHTS

2.1 Ownership. Licensor shall own all right, title, and interest in the Software, Documentation and all intellectual property rights inherent therein, including, without limitation, all changes, improvements and customizations requested or suggested by Licensee in the support and maintenance of the Software.

2.2 License Grant. Licensor hereby grants Licensee a perpetual, non-exclusive, non-transferable, fee-bearing license, subject to the limitations contained herein, to use the current version of the Software to manage declared disasters occurring in the U.S. Virgin Islands.

The Software shall initially be used only on equipment and at location(s) identified in Exhibit C as "Data Processing Centers." Use of the Software may be subsequently transferred to Data Processing Centers maintained by Licensee at other locations, provided (i) the total number of Data Processing Centers at which the Software is used by Licensee does not exceed the number of Data Processing Centers specified in Exhibit C, and (ii) Licensee provides Licensor with written notice 30 days before such transfer. The Software shall be used only for Licensee's own business, which shall include servicing, and maintaining records on behalf of, its customers and clients.

2.3 Documentation. Licensor agrees to provide Licensee copies of the Documentation for the Software in an electronic format. Licensor hereby grants Licensee a perpetual, non-exclusive, nontransferable license to reproduce and distribute the Documentation to its employees and agents subject to the terms and conditions of this Agreement.

2.4 No Implied License. Except for the express licenses granted herein, no other licenses are granted by implication, estoppel or otherwise.

3. RESTRICTIONS ON LICENSEE

3.1 No Reverse Engineering. Permitted modifications to the Software, if any, are limited to those set forth in Exhibit D. Licensee shall not (i) copy, modify, create any derivative work of, or include in any other software the Software or any portion thereof, or (ii) reverse assemble, decompile, reverse engineer or otherwise have the right to receive or use or attempt to derive source code (or the underlying ideas, algorithms, structure or organization) from the Software, except as specifically authorized in writing by Licensor.

3.2 Notices. Licensee shall ensure that all copies of the Software in Licensee's possession or control incorporate copyright and other proprietary notices in the same manner that Licensor incorporates such notices in the Software and Documentation or in any manner reasonably requested by Licensor. Licensee shall promptly notify Licensor in writing upon its discovery of any unauthorized use of the Software or infringement of the Software or Licensor's proprietary rights in the Software. Licensee shall not provide access to the Software to any party, including any employee of Licensee, if Licensor has notified Licensee that such party may be involved in potential unauthorized use of the Software or other infringement of Licensor's proprietary rights thereunder.

4. Price and Payment

4.1 Fees. Licensee shall make payment to Licensor for the Software license pursuant to the fees and payment terms set forth in Exhibit B.

4.2 Late Payments. Any sum not paid by Licensee when due shall bear interest until paid at a rate of 1.5% per month (i.e., 18% per annum) or the maximum rate permitted by law, whichever is less.

5. Software Ownership

Licensor represents that it is the owner of the Software and all portions thereof and that it has the right to modify the Software and to grant Licensee a license for its use.

6. Intent to Cooperate

Both Licensor and Licensee acknowledge that successful implementation of the Software pursuant to this Agreement shall require their full and mutual good faith cooperation, and Licensee acknowledges that it shall timely fulfill its responsibilities, including but not limited to those set forth below.

7. Title to Software Systems and Confidentiality

The Software and all programs developed hereunder, or related hereto, and all copies thereof are proprietary to, and trade secrets of, Licensor, and title thereto remains in Licensor, whether or not any portion thereof is, or may be, the subject of a valid patent, copyright or trademark. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software or any modifications, improvements or customizations made at Licensee's request pursuant to Section 19 or otherwise are and shall remain in Licensor. Licensee shall not sell, transfer, publish, disclose, display or otherwise make available the Software or copies thereof to others. Licensee agrees to secure and protect each module, software product, documentation and copies thereof in a manner consistent with the maintenance of Licensor's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to each program or software product to satisfy its obligations hereunder. All copies made by the Licensee of the Software and other programs developed hereunder, including translations, compilations, partial copies with modifications and updated works, are the property of Licensor. Violation of any provision of this Section shall be the basis for termination of this Agreement under Section 14.1.

8. Installation Acceptance

The Software shall be deemed to have been installed and accepted on the first day on which it passes Licensor's standard test procedures on the equipment approved by Licensor pursuant to Section 17 (the "Initial Installation") and when Licensee has also tested and provided its approval.

9. Use and Training

Licensee shall limit the use of the Software to its employees and consultants who have been appropriately trained. Licensor shall make training for the Software available to Licensee pursuant to its standard training procedures, or as agreed to by Licensor and Licensee in writing.

10. TRADEMARKS, TRADE NAMES AND BRANDING

10.1 Trademarks and Branding Guidelines. Licensee shall comply with trademark and branding guidelines communicated by Licensor.

10.2 Advertising and Promotional Media. Notwithstanding any other provision of this Agreement, Licensee agrees that Licensor may use Licensee's name in Licensor's advertising and promotional media. Licensee may use Licensor's product names in Licensee's advertising and

promotional media provided that (i) Licensee conspicuously indicates in each such medium that such names are trademarks of Licensor, and (ii) Licensee follows reasonable trademark usage guidelines communicated by Licensor.

10.3 Obligation upon Termination or Expiration. Upon expiration or termination of this Agreement for any reason, at Licensor's request, Licensee will immediately cease all use of Licensor's trademarks, marks, and trade names that Licensor may adopt from time to time and, at Licensor's election, either destroy or deliver to Licensor all materials in Licensee's control or possession which bear such marks or names.

11. Warranty

11.1 Specification Conformance. Licensor warrants that, during the Warranty Period, the Software will conform, as to all substantial operational features, to Licensor's current published specifications when installed and will be free of defects which substantially affect system performance.

11.2 Defects. Licensee must notify Licensor during the Warranty Period of its claim of any such defect by making an on-line submittal of a claim as provided at mb3online.com. If the Software is found defective by Licensor, Licensor's sole obligation under this warranty is to remedy such defect in a manner consistent with Licensor's regular business practices.

11.3 LIMITATION OF LIABILITY. THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY LICENSOR. THE SOFTWARE IS PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR MAKES AND LICENSEE RECEIVES NO WARRANTY EXPRESS OR IMPLIED AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR AND/OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF LICENSOR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, INSTALLATION, USE, OR PERFORMANCE OF THE SOFTWARE. IN ANY CASE, Licensee agrees that Licensor's liability arising out of contract, negligence, strict liability in tort, warranty OR OTHERWISE shall not exceed any amounts payable TO LICENSOR by Licensee for the Software as per Paragraph 17 of the executed Contract

11.4 Licensee Modifications. If any modifications are made to the Software by Licensee during the Warranty Period without the written authorization of Licensor, this warranty shall immediately be terminated. Correction for difficulties or defects traceable to Licensee's errors or systems changes shall be billed at Licensor's standard time and material charges, unless requested by Licensee and as approved by Licensor

12. Indemnity

12.1 Indemnification by Licensor.

(a) Licensor shall defend any claim, suit or proceeding brought against Licensee so far as it is based on a claim that use of the Software supplied hereunder infringes a United States copyright or an existing United States patent (issued as of the Effective Date). As a condition to such defense, Licensee will provide Licensor with prompt written notice of the claim and permit Licensor to control the defense, settlement, adjustment or compromise of any such claim. Licensee may employ counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because of a conflict of interest of either Licensor or its counsel or because Licensor does not assume control, Licensor will bear the reasonable expense of such counsel. Licensee shall have no authority to settle any claim, lawsuit or proceeding without Licensor's prior written approval.

(b) If, as a result of any claim of infringement against any patent, copyright, license or other property right, Licensor is enjoined from using the Software, or if Licensor believes that the Software is likely to become the subject of a claim of infringement, Licensor at its option and expense may procure the right for Licensee to continue to use the Software, or replace or modify the Software so as to make it non-infringing. If neither of these two options is reasonably practicable, in the sole judgment of Licensor, Licensor may discontinue the licenses granted herein on one month's written notice and refund to Licensee the unamortized portion of the license fees paid with respect to the year in which Licensee's use of the Software is terminated (based on straight line depreciation over such year, with such depreciation to commence on the first day of such year). The foregoing states the entire liability of Licensor with respect to infringement of any copyrights or patents by the Software or any parts thereof.

(c) Licensor shall have no obligation under subsections (a) and (b) above to the extent any claim of infringement or misappropriation results from (i) use of the Software in combination with any other product, end item, or subassembly if the infringement would not have occurred but for such combination; (ii) use or incorporation in the Software of any design, technique or specification furnished by Licensee, if the infringement would not have occurred but for such incorporation or use; (iii) any claim based on Licensee's use of the Software as installed by Licensor after Licensor has informed Licensee of modifications or changes in the Software required to avoid such claims and offered to

implement those modifications or changes, if such claim would have been avoided by implementation of Licensor's suggestions. Licensor shall not be liable hereunder for enhanced or punitive damages which could have been avoided or reduced by actions within the control of Licensee.

(d) THE FOREGOING PROVISIONS OF THIS SECTION 12.1 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF LICENSOR AND THE EXCLUSIVE REMEDY OF LICENSEE AND ITS CUSTOMERS, WITH RESPECT TO ANY VIOLATION OR INFRINGEMENT OF ANY PROPRIETARY RIGHTS, INCLUDING BUT NOT LIMITED TO PATENTS, COPYRIGHTS AND TRADE SECRETS, BY THE SOFTWARE OR ANY PART THEREOF. LICENSOR'S OBLIGATIONS UNDER THIS SECTION 12.1 ARE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 11.3.

12.2 Indemnification by Licensee.

(a) Licensee shall defend, indemnify and hold harmless Licensor and its officers, directors, employees, shareholders, customers, agents, successors and assigns from and against any and all loss, damage, settlement, costs or expense (including legal expenses and expenses of other professionals), as incurred, resulting from, or arising out of (i) any breach of this Agreement; (ii) any third party claim which alleges that the Licensee's hardware incorporating the Software infringes upon, misappropriates or violates any patents, copyrights, or registered trademarks of persons, firms or entities who are not parties to this Agreement where such unlawful activity is completely independent of the Software; (iii) any claim relating to negligence, misrepresentation, error or omission by Licensee, or its officers, directors, employees, customers, agents, successors and assigns, or failure to pay required taxes due under this Agreement; and (iv) any warranties Licensee makes to customers, clients or other third parties beyond the scope of this Agreement.

(b) Licensee shall not be required to indemnify, defend, or hold harmless the Licensor and its officers, directors, employees, shareholders, customers, agents, successors and assigns for all claims, damages, losses, and expenses, direct, indirect or consequential and causes of action of whatsoever character which are premised, in whole or in part, on the alleged acts and/or omissions of the Indemnified Parties.

(c) As a condition to such defense and indemnification, Licensor will provide Licensee with prompt written notice of the claim and permit Licensee to control the defense, settlement, adjustment or compromise of any such claim. Licensor may employ counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because of a conflict of interest of either Licensee or its counsel or because Licensee does not assume control, Licensee will bear the reasonable expense of such counsel.

13. CONFIDENTIALITY

13.1 Confidential Information. The parties acknowledge that in soliciting Licensee and negotiating this Agreement, Licensor has provided certain confidential or proprietary information to the Licensee ("Confidential Information"), which includes, without limitation, some or all of the following information: customer lists, prospect lists, data, financial information, business plans, marketing information, know-how, techniques, trade secrets, samples, intellectual property, and product research, development and other ideas or concepts. Licensee shall not disclose the Confidential Information to any third party other than employees, agents and contractors who have a need to have access to and knowledge of the Confidential Information solely for the purposes contemplated by this Agreement. Licensee shall take appropriate measures by instruction and agreement prior to disclosure to such employees, agents and contractors to assure against unauthorized use or disclosure. Licensor shall retain all right, title and interest to the Confidential Information. Except as specifically provided in this Agreement, no license under any trademark, patent or copyright, or application for same which are now or thereafter may be obtained by such party is either granted or implied by the disclosure of Confidential Information. The obligations of Licensee concerning confidentiality shall survive the termination of this Agreement.

13.2 Agreement as Confidential Information. The parties shall treat the terms and conditions of this Agreement as Confidential Information. Each party shall obtain the other's consent prior to any publication, presentation, public announcement or press release concerning the terms and conditions of this Agreement. Notwithstanding the foregoing, it is understood and agreed that Licensor may disclose the existence of this Agreement to third parties, including, without limitation, potential customers.

13.3 Exclusions. Licensee shall have no obligation under Section 13.1 with respect to information which (a) was rightfully in possession of or known to Licensee without any obligation of confidentiality prior to receiving it from the Disclosing Party; (b) is legally and publicly available without breach of this Agreement; (c) is rightfully obtained by Licensee from a source other than Licensor without any obligation of confidentiality; or (d) is disclosed by Licensee pursuant to a valid order issued by a court or government agency or pursuant to any law or regulation requiring disclosure of public records or information, provided that Licensee provides Licensor prior written notice of such obligation and the opportunity to oppose such disclosure or obtain a protective order.

14. Termination

14.1 **Termination for Cause.** Licensor shall have the right to terminate this Agreement and the licenses granted herein upon ten days' written notice in the event that Licensee or its officers, directors, employees or agents violates any covenant, agreement, representation or warranty of this Agreement in any material respect, including, but not limited to, (i) reverse engineering or otherwise infringing Licensor's proprietary rights by Licensee or its employees or agents; (ii) violation of the license grants; (iii) nonpayment of license or other fees; (iv) attempts to assign this Agreement; (v) failure to pay in a timely manner; or (vi) breach of confidentiality obligations. Termination of this Agreement and the licenses granted herein shall be in addition to and not in lieu of any equitable remedies available to Licensor.

14.2 **Return of Materials.** In the event of termination by reason of the Licensee's failure to comply with any part of this Agreement, or upon any act which shall give rise to Licensor's right to terminate, Licensor shall have the right, at any time, to terminate the licenses granted herein and take immediate possession of the Software and Documentation and all copies wherever located, without demand or notice. Within five (5) days after termination of the licenses, Licensee will return to Licensor the Confidential Information and Software in the form provided by Licensor or as modified by Licensee, or upon request by Licensor, destroy the Confidential Information and Software and all copies, and certify in writing that they have been destroyed.

14.3 **Survival.** Sections 3, 4, 10, 11, 12, 13, 14, 15 and 20 shall survive termination or expiration of this Agreement. Notwithstanding anything in this Agreement to the contrary, in the case of termination by Licensor for cause pursuant to Section 14.1, Licensee shall pay any outstanding license or other fees owed to Licensor after termination.

16. **Hardware Requirements**

Licensee shall make available for the Software implementation, at each location listed in Exhibit C, computer equipment and software configurations approved by Licensor as adequate for such implementation at such location.

17. **Initial Installation**

The Software shall be delivered and installed at each Data Processing Center identified in Exhibit C in accordance with the delivery and installation schedule provided to Licensee by Licensor.

18. **Licensed Locations**

Use of the Software by the Licensee at any location other than those described in Section 17 shall be the basis for immediate termination of this Agreement under Section 14.1.

19. **Custom Modifications**

All custom modifications to the Software shall be undertaken by Licensor at its then current time and materials charges. For each custom modification requested, Licensee shall provide written specifications to Licensor, which shall be mutually agreed upon prior to commencement of such custom modification effort.

20. **MISCELLANEOUS**

20.1 **Force Majeure.** Licensor shall not be liable to Licensee for delays or failures in performance resulting from causes beyond the reasonable control of Licensor, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties. However, in any case, Licensee's obligations to pay the license or other fees and payments hereunder shall continue but is limited to fees and payments incurred for work completed up to the Force Majeure event.

20.2 **Relationship of Parties.** Licensee acknowledges and agrees that Licensee has independently verified that the Software is appropriate for the purposes for which Licensee intends to use the Software, and that Licensee did not rely upon any skill or judgment of Licensor in such selection. The parties are independent contractors under this Agreement and no other relationship is intended, including a partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or other special relationship. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

20.3 **No Third Party Beneficiaries.** Unless otherwise expressly provided, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Licensor and Licensee any rights, remedies or other benefits under or by reason of this Agreement.

20.4 **Equitable Relief.** Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

20.5 **Attorneys' Fees.** In addition to any other relief awarded, the prevailing party in any action arising out of this Agreement shall be entitled to its reasonable attorneys' fees and costs.

20.6 [Intentionally Omitted]

20.7 **Assignment.** Licensee may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of Licensor. Any attempted assignment or delegation without Licensor's written consent will be void. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns.

20.8 **Waiver and Modification.** Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties.

20.9 **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

20.10 **Time Limitation on Actions.** No action, regardless of form, arising out of this Agreement may be brought by Licensee more than two years after the cause of action has arisen.

20.11 **Headings.** Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.

20.12 **Entire Agreement.** This Agreement, including the Executed Contract and all exhibits which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.

20.13 **Counterparts.** This Agreement may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

20.14 **Basis of Bargain.** EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Agreement by persons duly authorized as of the Effective Date.

MB3 INC.

By: Angele C Romig

Name: Angele C. Romig

Title: Exec. Vice President

Date: 10/11/19

"Licensee"

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A: SOFTWARE

EMGrantsPro Standard Edition

EMGrantsPro helps States efficiently manage grants. The system helps minimize paperwork and hassle, reimburse faster and with accuracy, stay on top of deadlines and access real-time information.



EMGrantsPro has been designed to help States optimize efficiency by centralizing all aspects of the grant management process. The system unites the management of grants, workflow, documents, contacts, and enables collaboration and Applicant login in one integrated solution.

GRANT MANAGEMENT
SOFTWARE

TO OPTIMIZE EFFICIENCY
THROUGH
CENTRALIZATION



Highlights:



ADMINISTER GRANTS

You can administer the entire grant process through closeout. The system works with Public Assistance (PA), Hazard Mitigation Assistance (HMA) programs, Homeland Security Grant Program (HSGP), Emergency Management Performance Grant (EMPG), and more.



MANAGE APPLICANTS

All Applicant data and contacts are in a single repository. You can then manage the entire process for grant application and then closeout. For Public Assistance, Applicant requests for assistance can integrate with FEMA's Grants Portal.



TRACK PROJECTS

All project information is stored in the system allowing quick web-based access. You can monitor deadlines, track costs, and close projects with ease. Public Assistance projects are automatically imported into EMGrantsPro via a nightly integration with FEMA's Datawarehouse system. Non-PA project applications can all be submitted in the system and routed for review. Project requests such as Scope Changes, Time Extensions or Closeouts can be submitted and tracked in the system. Quarterly Report data can also be collected and exported in the format FEMA requires.



PROCESS PAYMENTS

Payments are automatically triggered when projects are obligated or funds requested. Requests for Reimbursement can be submitted including attaching any expense documentation. Transactions can then be compiled in a payment for routing and processing. EMGrantsPro also can integrate with State Financial Systems to reduce manual error and make payments faster.



COLLABORATE

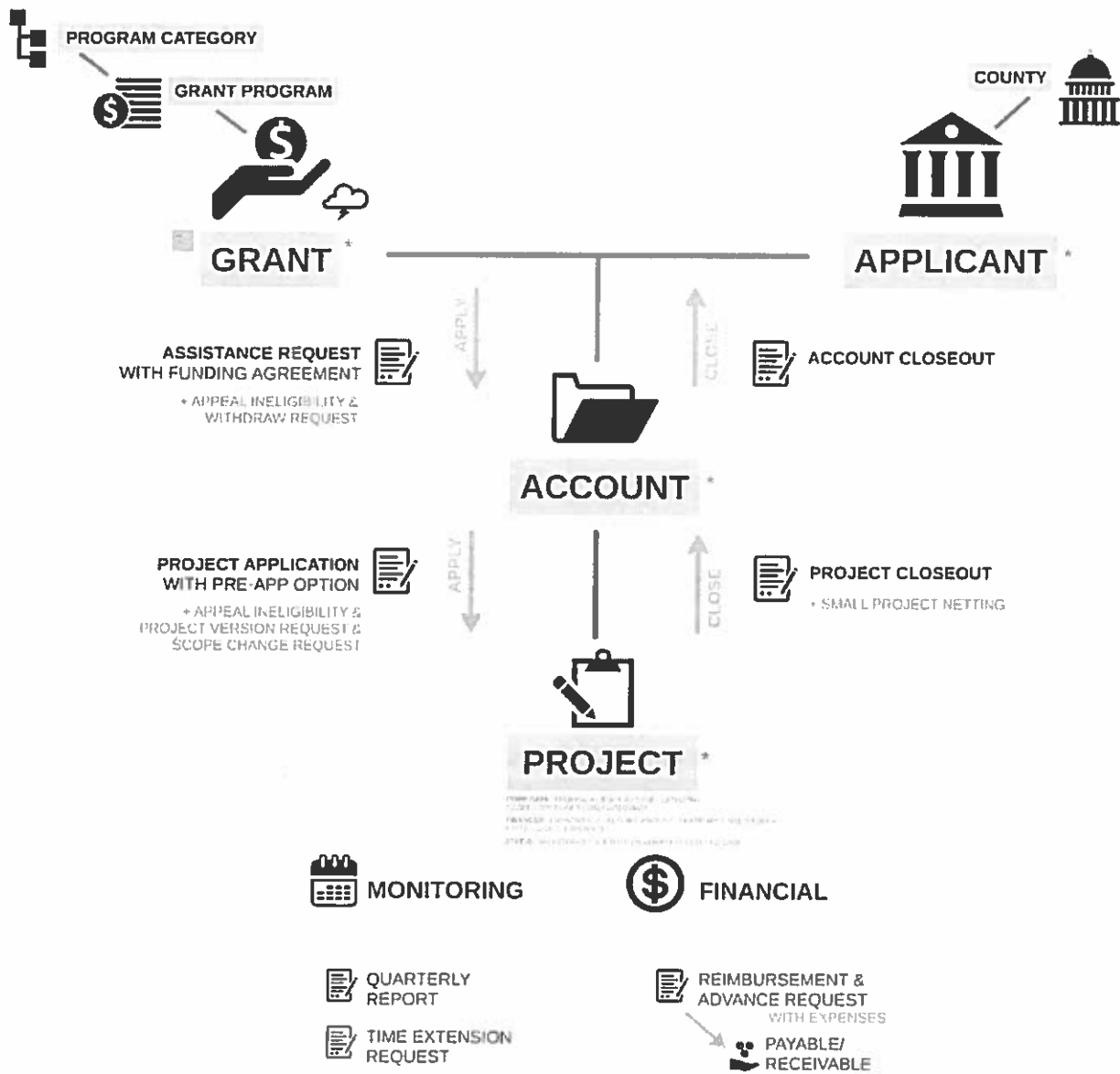
With your operation entirely centralized, collaboration can happen on virtually anything. You can easily manage issues, route forms through configurable workflow paths, send messages, and more.



GENERATE REPORTS & MORE

The system gives you a birds-eye view of your organization with countless real-time reports. Other features include Excel exporting, quick search, document management, and many administrative tools.

Modules included with Standard Edition:



Listings & Reports included with Standard Edition:

Accounts & Projects

- Grant Listing
- Applicant Listing
- Account Listing
- Account Contact Listing
- Meeting Listing
- Application Listing

- Project Listing
- Project Version Listing
- Package Listing
- Work Category Report
- Quarterly Reports by Project
- Scope Change Listing
- Project Closeout Listing

Financial

- Financial Workflow Report
- Financial Detail Report by County
- Funding Projections Report
- Payable & Receivable Listing
- Expense Listing
- Project Cost Lines Listing
- Transaction Listing

For more information about EMGrantsPro, including detailed features and benefits, please visit EMGrantsPro.com.

EXHIBIT B: FEES AND PAYMENT TERMS

Product & Implementation Details:

Coverd in Appendix A Project Timeline within the contract.

EXHIBIT C: DATA PROCESSING CENTERS

The product will be hosted with Licensor.

EXHIBIT D: SOFTWARE INTEGRATION

The product will optionally integrate with other systems, sending and receiving data, at the discretion of Licensor. Integrations with other systems are at an additional cost over and above the standard license fee.