

## PROFESSIONAL SERVICES CONTRACT

This **CONTRACT** (hereinafter referred to as the "Contract") is made this <sup>rd</sup> 23 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 **Armand Corporation**, a foreign corporation registered to do business in the U.S. Virgin Islands, whose address is 1350 Broadway, Suite 1901, New York, NY 10018 (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 Irma and Maria (the "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 Government of the Virgin Islands designated the VIHFA 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. Tranche 1 in the amount of \$242,684,000 was announced on February 2, 2018, and Tranche 2 in the amount of \$779,217,000 was announced on April 10, 2018.; 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 awarded CDBG-DR funds to be used to address unmet needs from the 2017 disasters; and

**WHEREAS**, on April 5, 2019 the VIHFA issued a Request for Proposals, RFP 003-2019-DR-STT/STX to solicit proposals from qualified and licensed firms to provide construction management services 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 construction management services for its portfolio of housing programs under the CDBG-DR Program, as shown in the scope of work set forth in Section I 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 perform construction management services for its portfolio of housing programs under the CDBG-DR Program;

**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:**

Contractor shall provide Construction Management Services for the DR Housing Programs (which includes, but may not be limited to, Disaster Recovery (CDBG-DR) Homeowner Rehabilitation and Reconstruction Program and the CDBG-DR Rental Rehabilitation and Reconstruction Program, the Contractor shall perform, or cause to be performed, the following services:

- a) Enhance the capacity of VIHFA to oversee a large volume of construction projects efficiently and in compliance with all federal, state and local laws, rules, and regulations governing CDBG-DR funding, and local building codes;
- b) Provide high quality housing rehabilitation and reconstruction consistent with Program policies and procedures and all applicable requirements;
- c) Recommend revisions to program policies, procedures and operations based on expertise and experience in the Program
- d) Respond promptly to inquiries, schedule site visits and inspections, within program guidelines
- e) Attempt to detect and prevent fraud, waste, and abuse
- f) Ensure continual quality assurance/quality control
- g) Assume control and management responsibility of current programming and procedures
- h) Assist in the permitting process and resolution of regulatory issues
- i) Provide daily and periodic communication/reports, to include homeowner construction files, inspection reports, to VIHFA/Case Manager program staff
- j) Secure documentation of construction activity to provide an audit trail of all applicants through final inspection and closeout
- k) Maintain an ability to provide services in multiple languages as necessary, including English and Spanish

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**Construction Management General Standards:**

***Program Design***

- a) Adhere to construction standards appropriate for USVI rehabilitation and reconstruction activity, including customization of green building requirements and resilience measures to meet the needs of USVI housing stock
- b) Develop standard specifications and cost schedules
- c) Conduct damage assessments and prepare detailed scopes of work and cost estimates for specific projects
- d) Recommend ways to organize construction projects, including grouping sites together, to achieve efficiencies and cost savings in construction
- e) Conduct progress inspections and review contractor requests for payment to VIHFA
- f) Conduct final inspections to ensure quality construction, and compliance with all applicable codes, regulations, and program requirements to support project closeout

***Program Administration:***

- a) Assist VIHFA in serving as on-site project management representative for completion of construction items for the construction projects
- b) Assist and work with VIHFA to perform Value Engineering Analysis and Constructability Reviews of the design and contract documents to identify savings opportunities, discrepancies and variances prior to bid of Work
- c) Develop detailed final cost estimates for each project and validate against established Program budget, as agreed to by the Parties
- d) Assist in the preparation and packaging of construction bid documents, project specific special conditions including, but not limited to, mitigation monitoring plan, contract time, construction phasing, completion and occupancy dates
- e) Provide recurring administrative reports pertaining to construction projects
- f) Develop timelines/network that will incorporate all activities relevant to the project, including priorities and critical milestones
- g) Assist VIHFA in its community relations efforts to generate local contractor participation in the Program and provide information relative to upcoming projects to the local contractor community

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- h) Assist VIHFA in establishing a standardized bidding process and procedure
- i) Assist VIHFA in the preparation and issuance of Notice of Award and Notice to Proceed
- j) Coordinate and conduct project pre-construction conferences
- k) Assist VIHFA in working with other consultants and contractors during the construction administration phase of the project(s)
- l) Maintain documentation in shared projects files that include design documents, constructability review comments, estimates, bid documents, contracts, submittals, permits, meeting minutes, correspondence, change orders, pay requests, RFIs, shop drawings, claims, schedules and closeout
- m) Perform facility inspections, identifies deficiencies and initiates corrective actions
- n) Assist VIHFA to manage, evaluate and mitigate all change order proposals and schedule delays
- o) Monitor and report on contractor's quality control
- p) Attend job-site progress meetings, prepare and distribute meeting minutes and report urgent issues
- q) Develop and maintain a detailed project schedule and review and report on contractor's baseline schedule and schedule-of-values
- r) Review Contractor's periodic schedule updates and review invoices to VIHFA
- s) Assist in development of the transition plan to occupy the premises upon completion of construction; develop and implement the phasing and synchronization of transition activities, as required
- t) Perform analysis of equipment failures and outages to identify trends and areas needing improvement
- u) Make recommendations to VIHFA regarding final project approval and acceptance; receive and review project(s) record and as-built drawings; assist in preparing and submit the project(s) accounting and close-out reports

**Architectural & Engineering Blueprints:**

- a) Assist VIHFA in obtaining architectural and engineering blueprints, on an as needed basis, within scope of agreement with architect. VIHFA has agreed to and desires that Boschulte Architecture be engaged as the architectural and engineer for the project.
- b) Provide Field verification inspections

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- c) Assist in obtaining Building Permits for plans and, if required, submit to the Department of Historic Preservation if required
- d) Submission of demolition permits to Department of Planning and Natural Resources
- e) Perform other related duties as assigned within the scope of construction management services, as defined by VIHFA

**Damage Assessment Services:**

- a) completion of damage assessments using software which has been approved by the program, price lists, procedures, forms in accordance with program policies
- b) Complete an assessor's checklist for each damaged property that includes site assessment, evaluation of damage, structure condition and recommendation of repairs
- c) Provide a damage assessment statement on the assessed structures condition, safety and rehabilitation/repair/reconstruction course of action
- d) Recommend to VIHFA the categorization of damaged properties into one of the many available programs for housing assistance and recovery in accordance with the United States Virgin Islands CDBG Action Plan (e.g., repair, reconstruction, substantially damaged, non-substantially damaged, etc.)
- e) Provide a description of the damage, and define scope of work and photographic documentation in accordance with approved procedures


**Inspection Services:**

- a) Provide inspection related project management services for interim inspections, final inspections and scope verification inspections

Provide inspection(s) to ensure compliance with the VIHFA Green Building Retrofit Checklist and other applicable Green Building requirements

- c) Verify scope of work is consistent with the approved design documents and Estimated Cost of Repair (ECR) and Allowable Activities (AA) documents
- d) Track and maintain a record of change orders, budgets and expenditures for all contracts for projects
- e) Track, monitor schedules, provide recommendations and implement strategies to keep projects on schedule and within budget as necessary

**Close-out Services:**

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- a) Coordinate with VIHFA staff and team of consultants to ensure timely close-out of projects
- b) Assist VIHFA to gather and assemble all financial, programmatic and administrative documents related to close-out.
- c) Close out procedures to occur upon scope of work completion of each home and/or project


**2. TERM:**

- (a) This Contract shall begin on the 23rd day of October, 2019, or the date on which the last Party has signed the Contract, whichever is later (the "Effective Date") and shall end on the date that is two (2) years after the Effective Date.
- (b) The VIHFA may elect to exercise the option for an additional two (2) year term, 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.

**3. COMPENSATION:**

- (c) 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 Thirteen Million Five Hundred Thousand Dollars (\$13,500,000.00) (the "NTE"). Contractor shall submit invoices for work performed that conform to the Project Schedule as outlined in Appendix A.
- (d) 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.
- (e) Contractor's obligations under this Contract and VIHFA's obligation to pay the Contractor for services performed under this Contract are 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 by VIHFA, but shall entitle Contractor to terminate if funds are not received and available to compensate Contractor for any period exceeding thirty (30) days. Notwithstanding the foregoing, Contractor shall be paid for all costs and services incurred to the date of any such notification from HUD to VIHFA regarding the non-availability of applicable disaster recovery funds. Payment for services rendered under this Contract to be paid is not eligible for reimbursement from any other funding source.

**4. REPRESENTATIONS, WARRANTIES, AND COVENANTS BY CONTRACTOR:**

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The Contractor represents, warrants, and covenants as follows:

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

- (a) Contractor shall supervise and direct the work of its employees and those subcontractors that are specifically engaged to assist in the completion of Contractor's work under this Contract.
- (b) Contractor shall maintain the professional standards applicable to its profession.

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- (c) 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 Contractor's work in this Contract. Without limiting the foregoing, Contractor is not responsible for payments to any other provider of construction services, any trades providing work or materials for the projects, or professionals' compensation.

**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 as soon as possible but no later than 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 Contractor 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 the proposal is submitted and accepted by the VIHFA, the contractor would have thirty (30) days to improve its performance.
- 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, 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 transmit to Contractor written notice requesting changes VIHFA believes are within the scope of services of this Contract, which may include additions or expansion of the contracted services for Contractor's written approval. VIHFA may also amend this Contract to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons which amendment shall be submitted for Contractor's written approval.

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- (b) The Contractor may submit to the VIHFA a request for a change in the scope of work under this Contract, or additional compensation and adjustment to the NTE. 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 Project Managers specified in Paragraph 8 and VIHFA may approve extensions to Deliverable Due Dates within the confines of the Performance Period.

**8. APPROVAL OF KEY PERSONNEL:**

VIHFA and the Program Manager reserve the right of final approval of all Contractor’s key project management personnel prior to assignment to the project. The Contractor shall provide the following key personnel, as identified in its proposal, for the term of this contract:


Senior Construction Manager:	Tony Brual
_____	
A&E Manager:	Jeffrey Boschulte
Site Assessment Inspection Manager:	Laura Simpson
QA/QC Lead:	Michael Cottingham
Lead Project Manager:	Chase McGee

During the execution of the project, VIHFA and the Program Manager reserve the right to demand removal of Contractor’s key personnel for lack of performance or for any inappropriate or offensive behavior, as defined and determined by VIHFA.

Contractor shall not be responsible for the conduct of any personnel or entities providing service or materials not under Contractor’s direct oversight.

**9. SUBSTITUTION OF KEY PERSONNEL:**

Contractor’s key personnel assigned to this Contract, listed in the response to the RFP, may not be replaced without the written consent of the VIHFA, provided that such consent shall not be unreasonably withheld or delayed provided an adequately qualified replacement is offered. Notwithstanding the preceding sentence, in the event that any key personnel must

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be removed for cause, in Contractor's sole discretion, or becomes unavailable due to resignation, illness, or other factors outside of Contractor's control, Contractor shall be responsible for providing an adequately qualified replacement. Contractor shall provide the resume and qualifications of any proposed substitution for key personnel.

The Contractor shall present to VIHFA and/or the Program Manager all subcontractors and/or subconsultants intended to be by Contractor on this project. Additionally, the Contractor shall provide its written agreement with subcontractors identified in its proposal. Any financial terms and personally identifying information (i.e. social security number) may be redacted from the production to VIHFA. Contractor will not be allowed to join subcontractors and/or sub-consultants to the project without the expressed written approval by VIHFA and/or the Program Manager.

- a. Contractor agrees to be responsible for all work performed and all expenses incurred with the project. If VIHFA permits Contractor to subcontract all or part of the work contemplated under this Contract, including entering into subcontracts with vendors for services and commodities, it is understood by Contractor that all such subcontract arrangements shall be evidenced by a written document subject to prior review and comment by VIHFA. Such review of the written subcontract document by VIHFA will be limited to a determination of whether or not subcontracting is permissible and the inclusion of applicable terms and conditions of this Contract. Contractor further agrees that VIHFA shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. Contractor, at its expense, will defend VIHFA against such claims.
- b. Contractor agrees that all Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of VIHFA and shall have all current licenses and permits required for all of the particular work for which they were hired by the Contractor. VIHFA may conduct, and Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Contractor. VIHFA may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with VIHFA's security or other requirements. Such refusal shall not relieve Contractor of its obligation to perform all work in compliance with the Contract.

## 10. CONTRACTOR'S MANAGEMENT OF CONSTRUCTION SUBCONTRACTORS

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- (a) Contractor shall not be responsible for the acts of any construction subcontractors, or any of their work performed or expenses incurred or any damages caused in the reconstruction and/or rehabilitation of any property.

- 10. PROFESSIONAL STANDARDS:** The Contractor will complete all work in accordance with standard practices in the construction services management services industry and the work shall conform with any and all laws 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.
- 11. ASSIGNMENT:** The Contractor shall not sub-contract or assign any part of the services under this contract without the prior written approval of VIHFA.
- 12. 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.
- 13. 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.
- 14. 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.
- 15. 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:
- a. The violation of any of the material terms or conditions of this Contract.
  - b. The making of any material misrepresentation by the Contractor in the furnishing of any information to the VIHFA.

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- c. 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;
- d. Failure, due to Contractor's negligence or willful misconduct, of Contractor to fulfill in a timely and proper manner the obligations under this Contract;
- e. 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
- f. 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, 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**

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

- 16. PROCEDURE FOR TERMINATION:** 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.

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17. **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 promptly upon Contractor's being actually aware of the 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.

**Without limiting the foregoing, Contractor shall not be responsible for any damages, penalties, costs arising from:**

1. Contractor's acts taken at direction of VIHFA;
  2. The acts of any third parties, construction subcontractors;
  3. The architect or any other professional or consultant
  4. lack of or availability of labor, materials and supplies, including long lead items.
  5. Conflicts between the various trades or overlapping responsibilities among subcontractors; however, Contractor shall notify VIHFA immediately of any conflicts for VIHFA's resolution
  6. Increases in Cost of labor, supplies, materials and equipment to be used in the performance outside of Contractor's control.
18. **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 003-2019-DR-STT/STX during the term of this Contract. The Contractor's professional liability insurance policy shall name the VIHFA as an "Additional Insured". Evidence of professional liability insurance shall be delivered to VIHFA within Ten (10) working days after the execution of this contract .

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's subcontractor and /or subconsultant shall also carry professional liability insurance in the amount usual and customary for work in the industry subject to normal deductibles and covenants that subcontractor and/or subconsultant will maintain such coverage as provided in RFP 003-2019-DR-STT/STX during the term of this Contract. The Subcontractor's and/or subconsultant's professional liability insurance policy shall name the VIHFA as an "Additional Insured". Evidence of professional liability insurance shall be delivered to VIHFA within Ten (10) working days after the execution of this contract.

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19. **INDEMNIFICATION:** The Contractor shall indemnify, defend, and hold harmless VIHFA, its property, consultants, employees, and the funding agency harmless from and against all claims, damages, losses, and expenses, directly arising as a result of Contractor's Work, or otherwise caused in whole or in part by any breach of this Contract or negligent act or omission of the Contractor's subcontractor(s), any person or organization directly or indirectly employed by them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of the negligence of such party.
20. **FALSE CLAIMS:** The Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against VIHFA. The Contractor acknowledges that making such false, fictitious, or fraudulent claim(s) is an offense under Virgin Islands law.
21. **CONFLICT OF INTEREST:** The Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to perform under this Contract.
22. **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.
23. **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.
24. **LIABILITY OF OTHERS:** Nothing in this Contract shall be construed 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.

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25. **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](mailto: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](mailto:anfleming@vihfa.gov)

**Contractor:** Armand Corporation  
1350 Broadway, Suite 1901  
New York, NY 10018

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.


26. **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 amended<sup>1</sup>, 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.

<sup>1</sup> (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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(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.

27. **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 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.

28. **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

29. **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

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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 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

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attempts at access shall not be considered a security incident. Contractor shall make a report to VIHFA not more 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.

30. **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.
31. **WORKER'S COMPENSATION:** Contractor shall maintain Workers Compensation insurance as required by law.
32. **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.
33. **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.
34. **ENTIRE AGREEMENT:** This Contract and any attachments thereto constitute the entire agreement between the parties hereto and all prior understandings or communications, written or oral, with respect to the project that is the subject of this Contract are merged herein. In the event of a conflict or inconsistency between any of the Contract Documents, the conflict or inconsistency shall be resolved by giving precedence in the following order:
  1. This Contract and all amendments; then
  2. Exhibits and Attachments hereto; then
  3. The RFP and any Addenda hereto; and then
  4. Terms of Contractor's proposal.
35. **COUNTERPARTS:** This Contract may be signed in counterparts, each of which will be deemed an original.

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### 36. ADDITIONAL TERMS

Notwithstanding anything to the contrary in this Contract, Contractor shall not be in breach of the Contract unless Contractor has received written notice of the alleged breach and fails to cure same within 30 days of such notice.

Regarding the Architectural Services:

- The fee for each project will be based on the agreed upon rate x the actual square footage of each residence.
- Predesign, schematic design, and design development to be consolidated into one phase/submission called "50% complete" to speed up approvals and production and reduce admin costs.
- Projects to be invoiced at 100% completion as drawings are completed to simplify billing and to reduce admin costs.
- Proposed lump sum fees to include a line item identifying any A&E services for production of construction documents/permit drawings and permitting assistance only.
- Services performed by Architect after permit approvals to be billed at Architect's hourly rates if required for the project, if required and approved by VIHFA-DR. Attendance at any project meetings to be billed hourly if required and approved by VIHFA-DR.
- Site surveys/plot plans are not required.
- The Case Management Firm shall provide stamped copies of deeds required for permit applications to be supplied by others to the Architect for use in permitting assistance. Cost of printing permit drawings, application copies, earth change map packages, CZM map packages, certified plot plans and other similar documents required by DPNR for permitting, and any permit fees shall be a reimbursable expense if paid for by the Architect for the project.
- Scope of work needed for each project and measurements needed by design team to perform its services to be performed by others (site inspectors). Architect shall be allowed to rely on the accuracy and completeness thereof.
- Drawing sheets to be consolidated to reduce number of sheets as much as feasible. Prints prepared for permitting only as required for that process, as a reimbursable expense.
- Finished drawings to others will be distributed electronically (PDFs) via CDs or USB Flash Drive. (To make things easier I recommend that the Program set up a file sharing website, cloud hosting service, or similar to upload files to. It will be faster and simpler to share information, takes up no physical space, and all stakeholders can be granted access to most updated files stored in one place. Drawings can be accessed and printed on demand if desired, and accessed in the field on mobile devices. Site information from inspectors and photographs can also be stored in project folders for access by the design team.

Fire sprinkler design to be an additional service at 20 cents per square foot of building area, if required and approved by VIHFA-DR. **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.


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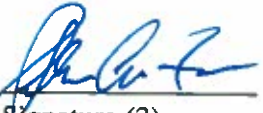


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**WITNESSES:**

  
Signature  
Tasheda N. Reyes  
Print Name (1)

  
Signature (2)  
Sherry-Ann Francis  
Print Name (2)

**CONTRACTOR:  
Armand Corporation**


  
Embury Kushner, President

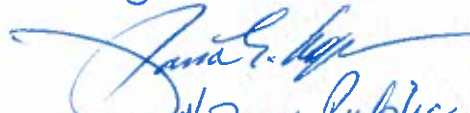
ACKNOWLEDGMENT

STATE OF Territory of the Virgin Islands)  
COUNTY OF District of St. Croix) ) ss:


On this 23<sup>rd</sup> day of October, 2019, before me, the undersigned officer, personally appeared, who acknowledged himself to be the President, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of Armand Corporation, as President.

*In witness whereof, I hereunto set my hand and seal.*

Reviewed for Legal Sufficiency:  
  
Denise Rhymer, Esq.  
Special Counsel  
Dated: 23<sup>rd</sup> day of October, 2019

  
Notary Public

NOTARY PUBLIC  
Flavia E. Logie, Esq.  
Commission Exp. October 19, 2022  
LNP-38-18

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**EXHIBITS AND ATTACHMENTS**

- Appendix A. Deliverables and Performance Measures
- Appendix B. Project Budget
- Appendix C. HUD Provisions
- Exhibit 1. Armand Corporation Virgin Islands Business License
- Exhibit 2. Insurance Certificates
- Exhibit 3. Debarment and Suspension Certification

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**Appendix A. Deliverables and Performance Measures**

<b>TASK</b>	<b>DELIVERABLE</b>	<b>MEASURE</b>	<b>PENALTY PAYMENT</b>
Key Management and Key Core Service positions on-site within 15 days of contract execution by all parties (Sr. Construction Manager, A&E Manager, Site Assessment Inspection Manager, Lead Project Manager, QA/QC Lead)	Required personnel on-site within 15 days of Contract execution by all parties	VIHFA Senior Construction Manager for Disaster Recovery, approval to be provided within 7 days of submission.	Contractor will pay a penalty payment of \$500 for every day beyond 20 days of Contract execution by all parties that a required individual has not reported to the Program location, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Staffing Plan within 20 days of contract execution by all parties	Provide an Approved and Accepted Overall Staffing Plan within 20 days of contract execution by all parties	Date of submission by Contractor. Acceptance by VIHFA Senior Construction Manager for Disaster Recovery to be provided within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$250.00 for every day beyond 7 days from written notice from VIHFA that they have not received the Staffing Plan, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Overall Project Management Plan, with timelines & milestones for damage assessments, blueprints, ongoing inspections, etc. within 30 days of contract execution by all parties	Provide an Approved and Accepted Overall Project Plan within 30 days of contract execution by all parties. Project management plan shall capture the entire project end-to-end; covering all project phases from initiation through planning, execution and closure.	Date of submission by VIHFA Senior Construction Manager for Disaster Recovery. Approval to be provided within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$250.00 per day beyond 7 days from written notice from VIHFA that they have not received the Overall Project Management Plan, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply


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<b>TASK</b>	<b>DELIVERABLE</b>	<b>MEASURE</b>	<b>PENALTY PAYMENT</b>
Project Definition Plan	Provide a definition report to document the project objective, duration, budget and recommended construction advertisement date	Date of submission of Project Definition Plan by Contractor. Acceptance by VIHFA Senior Construction Manager for Disaster Recovery, approval to be provided within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$250.00 for each day beyond 7 days from written notice from VIHFA that they have not received the the Project Definition Plan, , unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Project Schedule	Develop a project(s) baseline schedule that explicitly represents planned construction and resource utilization, identifies resource challenges and highlight project milestones	Project Schedule updated on a monthly basis and delivered to the VIHFA Senior Construction Manager for Disaster Recovery by the 10 <sup>th</sup> day of the following month. Acceptance by VIHFA to be provided within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$100.00 for each day beyond 7 days from written notice from VIHFA that they have not received the monthly Project Schedule up to a maximum of 30 days, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply.
Sub-contractor Plan	Provide a report that identifies the contractor's compliance with M/WBE. List proposed Sub-contractors to be used by Contractor; describe their experience and their qualification as well as specific involvement in this Program to be provided within 20 days of engaging a subcontractor contract execution.	Date of submission by Contractor to VIHFA Senior Construction Manager for Disaster Recovery. Approval to be provided within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$250.00 for each day beyond 7 days from written notice from VIHFA that they have not received the Subcontractor Plan unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply

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<b>TASK</b>	<b>DELIVERABLE</b>	<b>MEASURE</b>	<b>PENALTY PAYMENT</b>
Quality Assurance/Quality Control Plan	Provide an Approved and Accepted Quality Assurance/Quality Control Plan within 30 days of contract execution by all parities	Date provided by Contractor to VIHFA Senior Construction Manager for Disaster Recovery. Approval to be provided by VIHFA within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$250.00 for each day beyond 7 days from written notice from VIHFA that they have not received the Quality Assurance/Quality Control Plan, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Construction Contractor Monitoring Plan	Provide a Contractor Monitoring within 30 days of contract execution by all parities	Date Construction Contractor Monitoring Plan provided by Contractor to VIHFA Senior Construction Manager for Disaster Recovery. Approval to be provided by VIHFA within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$250.00 for each day beyond 7 days from written notice from VIHFA that they have not received the Plan, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Contractor's Training Plan regarding project flow	Provide a Contractor Training within 30 days of contract execution by all parities	Date of provision of Training Plan to VIHFA Senior Construction Manager for Disaster Recovery. Approval to be provided by VIHFA within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will pay a penalty payment of \$100.00 for each day beyond 7 days from written notice from VIHFA that they have not received the Plan, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Achieve a minimum of 45 Damage Estimates/Assessments Reports per inspector per month. This deliverable shall be met within 30 days after contract execution.	Demonstrate damage estimate production rate of 45 damage estimates, per inspector, per month provided there is sufficient applicant queue available in each program to support that rate	Provide specified number of Estimates/Assessment Reports for the prior month within 15 days of the end of the following month	Contractor will provide a penalty payment of \$150.00 for each 25% of homes short of the specified number for each day beyond 15 days from written notice from VIHFA that they have not received the Report, unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply

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<b>TASK</b>	<b>DELIVERABLE</b>	<b>MEASURE</b>	<b>PENALTY PAYMENT</b>
Provide Scope of Work & Cost Estimates & Material Lists within 21 days of damage estimates / assessment date or engineered blueprints completed	Task identified	Submission of task material to VIHFA Sr. Construction Manager. Approval to be provided within 7 days of submission, or if none received, shall be deemed accepted.	Contractor will provide a penalty payment of \$100.00 for each day beyond 7 days from written notice from VIHFA that they have not received the task materials , unless the delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
If needed, provide Engineered Blueprints within 30 working days of damage assessments date	Specified blueprints	Submission of blueprints to VIHFA Sr. Construction Manager. Approval to be provided by VIHFA within 7 days, or if none received, shall be deemed accepted	Contractor will provide a penalty payment of \$100.00 for each day beyond 7 days from written notice from VIHFA that they have not received the blueprints, unless delay is attributable to VIHFA or Force Majeure , in which case no penalty shall apply
Each inspector should do a minimum of 10 required ongoing construction inspections (both QA/QC & payment inspection) per week, per inspector	Specified number of inspections reports per week, per inspector provided there is sufficient applicant queue available in each program to support that rate	Provide specified number of inspections for the prior month within 15 days of the end of the following month. Approval to be provided by VIHFA, or if none received, shall be deemed accepted	Contractor will provide a penalty payment of \$150.00 for each day beyond 7 days from written notice from VIHFA that they have not received the inspections, unless delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Earned Value Analysis	Provide on a monthly basis by the 15 <sup>th</sup> day of the following month	Submittal to VIHFA Sr. Construction Manager within 15 days of the deliverable date. Approval to be provided by VIHFA, or if none received, shall be deemed accepted	Contractor will provide a penalty payment of \$100.00 each day beyond 7 days from written notice from VIHFA that they have not received the analysis, unless delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply

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<b>TASK</b>	<b>DELIVERABLE</b>	<b>MEASURE</b>	<b>PENALTY PAYMENT</b>
Project Close-Out	Close out of projects to be completed within 30 days after construction completed	Submittal of close out completion notice to VIHFA. Approval to be provided by VIHFA, or if none received, shall be deemed accepted	Contractor will provide a penalty payment of \$100.00 each day beyond 7 days from written notice from VIHFA that close out has not occurred, unless delay is attributable to VIHFA or Force Majeure, in which case no penalty shall apply
Document Control / Recordkeeping	Keep files audit ready	Availability of files to VIHFA CDBG-DR Construction Staff	
Document Control / Accessibility through shared project management software for VIHFA identified staff within 30 days of contract execution.	Shared files for each projects – daily access to VIHFA identified staff.	Coordinated with VIHFA Sr. Construction Manager	

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**Appendix B. Project Budget**

<b>Section 1</b>					
<b>Position</b>	<b># of Staff</b>	<b>Hourly Rate</b>	<b>Estimated Hours per Week</b>	<b>Estimated Timing</b>	<b>Estimated Total</b>
<b>Section 1</b>					
Sr. Construction Manager	1	\$187.20	40	100 weeks	\$748,800.00
Site Inspection Manager	1	\$149.76	40	100 weeks	\$599,040.00
Lead Project Manager	1	\$137.28	40	100 weeks	\$549,120.00
QA/QC Lead	1	\$112.32	40	100 weeks	\$449,280.00
Estimator	1	\$99.84	40	100 weeks	\$399,360.00
Project Manager	4	\$106.70	40	100 weeks	\$1,707,200.00
Field Inspector	8	\$94.85	40	100 weeks	\$3,035,200.00
Admin Support	4	\$71.14	40	100 weeks	\$1,132,240.00
<b>SUBTOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>\$8,626,240.00</b>

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<b>Section 2</b>					
<i>Start-up of Operations:</i>	<b>Unit</b>				<b>Estimated Total</b>
Equipment and supplies for on-island offices	1	N/A	N/A	N/A	\$55,000.00
Mobilization and office set up of on-island locations	1	N/A	N/A	N/A	\$258,000.00
Other Necessary One Time Costs (Please itemize on a separate sheet)	1	N/A	N/A	N/A	\$120,375.00
<b>SUBTOTAL – Start-up of Operations</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>\$433,375.00</b>
<b>Section 3</b>					
<i>Ongoing Expenses</i>	<b>Unit</b>	<b>Rate</b>		<b>Estimated Timing</b>	<b>Estimated Total</b>
Utilities	1	\$7,600.00	N/A	24 months	\$182,400.00
Travel (weekly lump sum)	1	\$7,867.68	N/A	100 weeks	\$896,875.00
Housing (weekly lump sum)	1	\$0	N/A	100weeks	\$432,000.00
Per Diem (weekly lump sum)	1	\$17,500.00	N/A	100 weeks	\$770,000.00
Other Necessary Costs (Please itemize on a separate sheet)					\$296,300.00
<b>SUBTOTAL – Ongoing Expenses</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>\$2,577,575.00</b>
<b>TOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>\$11,637,190.00</b>

<b>Section 4*</b>			
<b>Design Services</b>	<b>Avg. Sq. Feet</b>	<b>Cost Per Sq. Feet</b>	<b>Approximate # of Homes</b>
Reconstruction	1,400	\$2.00	300
Rehabilitation	1,400	\$1.40	500
<b>TOTAL – Design Services</b>	<b>TBD</b>	<b>N/A</b>	<b>Dependent on number and square footage of homes</b>

\*Overall design costs not to exceed One Million Eight Hundred Sixty-Two Thousand and Eight Hundred and Ten Dollars (\$1,862,810.00), regardless the approximate number of homes

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

a) Section 1: 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)

b) Section 2: Operating costs to be billed as actual costs incurred.

Documentation: Invoices & other supporting documentation to demonstrate actual costs incurred.

c) Section 3: Costs to be invoiced monthly and will be substantiated by adequate receipts to support invoices. No additional costs related to travel, housing or per diems will be reimbursed to the Contractor that exceed the respective cost per line item.

Documentation: Invoice based on monthly basis with adequate receipts and documentation to support costs.

d) Section 4: Operating costs to be billed as costs incurred.

Documentation: Invoices & other supporting documentation to demonstrate costs incurred and blueprints produced.

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## APPENDIX “C”

### HUD GENERAL PROVISIONS (“HUD RIDER”)

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development (“HUD”). In addition, Contractor/Subcontractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction. However, because of the construction management services contract any such provision of law and clause not applicable shall be deemed not applicable under a construction management services contract.

#### 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

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

5. ACCESS TO RECORDS

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

6. MAINTENANCE/RETENTION OF RECORDS

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

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

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

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

9. ENERGY EFFICIENCY

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

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

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

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

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor/Subcontractor 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,

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on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

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

15. CONFLICTS OF INTEREST

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

16. SUBCONTRACTING

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

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing an *equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

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The Contractor/Subcontractor represents to VIHFA that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

17. ASSIGNABILITY

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

18. INDEMNIFICATION

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

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

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

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and

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Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. DAVIS-BACON ACT

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

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

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

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

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

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

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

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

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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;
  - 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

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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)

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

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

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

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

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

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

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

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

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Subcontractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities,

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EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.

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

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

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


- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor/Subcontractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor/Subcontractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

29. BONDING REQUIREMENTS

(Applicable to construction and facility improvement contracts exceeding \$100,000)

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

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- (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 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

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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](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. 24 C.F.R. Part 170 outlines the requirements of recipients' in reporting information on subawards and executive total compensation under FFATA legislation. Any non-Federal entity that receives or administers Federal financial assistance in the form of: grants, loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, assessed and voluntary contributions; and/or other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal fund, is

subject to these requirements.

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

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VIHFA Initials: 

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

37. Environmental Review Record

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

38. Flood Insurance Requirements

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

39. Duplication of Benefits

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

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

40. Anti-Fraud, Waste and Abuse Checks

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

41. Affirmatively Furthering Fair Housing

The Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, et seq., dictates that grantees are required to administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Per the regulations of 24 C.F.R. § 570.601 and in accordance with Section 104(b)(2) of the

Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 et seq., for each community receiving a grant under Subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's Assessment of Fair Housing (AFH) plan, conducted in accordance with the requirements of 24 C.F.R. § §§ 5.150-5.180 (Affirmatively Furthering Fair Housing) and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

42. Drug Free Workplace

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

43. Timely Distribution of Funds

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

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

44. Property Management and Distribution

Regulations governing property management and distribution of real property, equipment, financial obligations and return of un-obligated cash post program closeout can be found in 24 C.F.R. § 570.506, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343 and 2 C.F.R. § 200.344(b). The standards of 24 C.F.R. § 570.506 apply to any real property under a CDBG award recipient's control acquired in whole or in part with CDBG funds in excess of \$25,000.00. The recipient may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property

is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.208 or if not, the recipient may either retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

45. Limited English Proficiency

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

46. Personally Identifiable Information

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

47. Uniform Relocation Act

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

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

(a) Certification.

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

(2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential anti-displacement and relocation

assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

(b) Plan contents.

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

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

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

49. Complaints and Appeals

Citizen comments on VIHFA's published Action Plan, any substantial amendments to the Action Plan, performance reports and/or other issues related to the general administration of CDBG-DR funds are welcomed throughout the duration of the grant. The Citizen Participation Plan is posted as a stand-alone document at [www.vihfa.gov](http://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](mailto:hotline@hudoig.gov).

50. Monitoring

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

Contractor's Initials:   
40000/0635-17937294v1

VIHFA Initials: 