

**COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY 2017 FUNDS**

SUBRECIPIENT AGREEMENT No. SA-DR(Lutheran Social Services of the V.I.)-003-2021

*(PROGRAM: REHABILITATION, RECONSTRUCTION, OR NEW CONSTRUCTION OF
PUBLIC FACILITIES)*

BETWEEN

VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

AND

LUTHERAN SOCIAL SERVICES OF THE VIRGIN ISLANDS, INC. [Subrecipient]

1. PARTIES AND PURPOSE

WHEREAS, this **SUBRECIPIENT AGREEMENT** ("Agreement") is entered into this _____ day of _____ 2021, in the Territory of the United States Virgin Islands between the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY** ("VIHFA"), a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the Virgin Islands by the name of the Virgin Islands Housing Finance Authority, hereinafter "Authority", located at 3202 Demarara Plaza, Suite 200, St. Thomas, USVI 00802, and the **LUTHERAN SOCIAL SERVICES OF THE VIRGIN ISLANDS, INC.** ("LSSVI" and/or Agency), a non-profit entity, located at 516B Hospital Street, Frederiksted, VI 00840-3824, and herein jointly referred to as the "Parties"; and

WHEREAS, in the aftermath of Hurricane(s) Irma and Maria, the United States Congress, through the Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017, Public Law (P.L.) 115-56, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, P.L. 115-123, appropriated approximately Thirty-Eight Billion Dollars (\$38,000,000,000) to the U.S. Department of Housing and Urban Development ("HUD") to be allocated as disaster recovery community development block grants among States, Puerto Rico and the United States Virgin Islands ("USVI") and other eligible government entities to provide crucial funding for recovery efforts involving housing, infrastructure, economic development, and the prevention of further damage to affected areas; and

WHEREAS, the USVI submitted to HUD, and on July 10, 2018, HUD approved a "Community Development Block Grant Disaster Recovery Action Plan ("Action Plan"),

detailing a range of Projects to address the Virgin Island's substantial unmet needs and recovery relief after Hurricanes Irma (FEMA-4335-DR) and Maria (FEMA-4340-DR); and

WHEREAS, based on the approved Action Plan, the USVI has received HUD Community Development Block Grant Disaster Recovery funding ("CDBG-DR") for hurricane disaster recovery; and

WHEREAS, pursuant to 83 FR 5844 (February 9, 2018) the USVI received a first allocation of \$242,684,000; and pursuant to 83 FR 40314 (August 14, 2018) the USVI received a second allocation of \$779,217,000; and pursuant to FR-6109-N-03 (September 4, 2019) and FR-6109-N-02 (August 30, 2019), the USVI received a third allocation of \$744,188,000, to address USVI's' substantial unmet needs and recovery relief after Hurricane(s) Irma and Maria; and

WHEREAS, on September 27, 2018, the USVI executed Grant Agreement, No. 1, B-17-DM-78-0001 with HUD, and on February 10, 2020 Grant Agreement No. B-18-DP-78-0001, to use CDBG-DR funds for the necessary expenses related to disaster relief projects, long-term recovery, restoration of housing, infrastructure and economic revitalization in the impacted and distressed areas in the USVI; and

WHEREAS, the VIHFA is the Administrator of the CDBG-DR funds; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions by which the VIHFA will provide the LSSVI with the CDBG-DR Project funding for the LSSVI's use in the implementation of the designated Projects, as outlined in the Action Plan, approved by HUD, as well as any ensuing Amendments to the Action Plan (approved by HUD); and

WHEREAS, pursuant to the terms and conditions set forth in this Agreement, including the Appendices hereto, implementation of the specific Projects described in the approved Action Plan will be undertaken by the LSSVI; and

WHEREAS, implementation of the Action Plan Projects shall be undertaken in compliance with the Federal, and territorial laws and regulations as well as the requirements of the CDBG-DR Project and federal cross-cutting requirements including the National Environmental Policy Act of 1969 ("NEPA"), as amended; and

WHEREAS, activities undertaken under this Agreement and benefits determined for recipients shall not duplicate Projects or benefits provided to the USVI through other Federal recovery Projects, private benefits or benefits gained from non-profit entities, including those run by the Federal Emergency Management Agency ("FEMA"), and coordinated with such resources; and

WHEREAS, the Parties wish to set forth, in this Agreement, their mutual understanding regarding their respective roles and responsibilities in implementing the activities set forth in the Action Plan and any Action Plan Amendments that may ensue.

WHEREAS, CDBG-DR funds made available for use to LSSVI under this Subrecipient Agreement constitutes a subaward of the CDBG-DR Federal Grant Award, which funding and use must be in accordance with the Action Plan, and any subsequent amendments, requirements imposed by Federal statutes, regulations, and the terms and conditions of the CDBG-DR Federal Grant Award.

NOW THEREFORE, in consideration of the principles, assurances and promises contained herein, the VIHFA and the LSSVI hereby agrees on the following terms and conditions to govern administration, implementation and oversight of any CDBG-DR funds to be allocated under the Rehabilitation, Reconstruction or New Construction of Public Facilities as outlined in the Action Plan, et. al..

2. DEFINITIONS AND LIST OF APPENDICES

A. Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

"Acts" means the Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017, P.L. 115-72 and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, P.L. 115-123

"Activity" means any project, or portion thereof that: (1) receives Grant Funding under this Agreement; (2) is CDBG-DR eligible or has received a waiver (See 83 FR 5844 February 9, 2018 and subsequent Federal Register notices covering these allocations for identification and explanation of waivers and alternative requirements granted); (3) meets a "national objective" as set forth in 24 CFR 570.482; and (4) addresses a direct or indirect impact from the hurricane.

"Activity Delivery Costs" means the actual implementation and delivery costs, including staff and overhead cost, directly related to carrying out activities under 24 CFR 570.201. These costs are eligible for Grant Funding as part of such activities and are specifically excluded from the definition of administrative costs set forth in 24 CFR 570.206.

"Action Plan" means the Virgin Islands Community Development Block Grant Disaster Recovery Action Plan and any subsequent amendments, as approved by HUD.

"Agreement" means this Subrecipient Agreement entered into, and between, the VIHFA and THE LSSVI.

"Amended CDBG-DR Application" means an Application form that shall be used by the be submitted to VIHFA each time there is a change to the project.

"CDBG-DR Application" means the form required by VIHFA to formally apply for CDBG-DR funds for an eligible project.

“Common Rule” means the uniform administrative requirements for Federal grants as prescribed by 24 CFR Part 85 (government entities) or Part 84 (nonprofit organizations).

“Contractor” means a contractor paid with CDBG-DR funds in return for a specific service (e.g., demolition, property surveys, property appraisals, etc.). A contractor is a third-party firm the VIHFA or the LSSVI contracts with through a formal procurement process to perform specific functions. The LSSVI is not considered a contractor for purposes of this Agreement.

“Draw Down” means the process of requesting and receiving CDBG-DR funds.

“Direct Project Costs” means the per property costs for land acquisition, property survey, demolition/restoration costs, and title insurance policies.

“Duplication of Benefits” means financial assistance under any other Project or from insurance or any other source for any part of a loss for which LSSVI has received assistance through CDBG-DR funds or programmatic activities.

“Eligible Activity” means any project, or portion thereof that receives financial assistance under this Agreement consistent with the USVI’s Action Plan, Action Plan Amendments, and Federal Register Notices applicable to Hurricanes Irma and Maria allocations and otherwise compliant with applicable Federal laws and regulations, and therefore is eligible to receive CDBG-DR funding.

“Environmental Requirements” means the requirements described in 24 CFR Part 58.

“Environmental Studies” means all Eligible Activities necessary to produce an "environmental document," as that term is defined at 40 CFR 1508.10, or to comply with the requirements of 24 CFR Part 58.

“Indirect Costs” means any cost incurred for ‘shared’ or ‘joint’ objectives and cannot be readily identified with any particular activity.

“National Environmental Policy Act of 1969” (“NEPA”) was signed into law on January 1, 1970. NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.

“National Objectives” means the following policy objectives of Title I of the Housing and Community Development Act of 1974 (the HCD Act), of which at least one (1) must be approved by HUD for application and therein complied with in using CDBG-DR funds to carry out any of the CDBG-DR funded projects: (a) urgent need, such that the activity addresses existing conditions that pose a serious and immediate threat to the health or welfare of the community in the aftermath of a disaster and other financial resources are not available to meet such needs; (b) benefit low- and moderate-income persons, either directly, or to a geographical area with a population concentration of low and moderate-income persons that

HUD determines would satisfy the aims of the HCD Act; or (c) prevent or eliminate slums or blight.

“Project(s)” means the designated projects and programs, as approved by HUD in the Virgin Islands Community Development Block Grant Disaster Recovery Action Plan and any subsequent amendments thereto and as further described in Appendix D of this Agreement.

“Subcontractor” means an individual, business, or entity with whom a Contractor retains per an agreement to carry out activities or services related to CDBG-DR projects.

“Subrecipient” means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 24 CFR 570.201(o), receiving CDBG-DR funds from the VIHFA to undertake projects/activities eligible under the Action Plan.

B. List of Appendices

All Appendices are attached hereto and made a part hereof:

Appendix A: General Conditions of the Contract

Appendix B: HUD General Provisions; “HUD Rider”

Appendix C: Special Conditions

Appendix D: Project Agreement(s) providing a Description, Scope and Budget for the implementation of a project in response to Hurricane(s) Irma and Maria under the Community Development Block Grant Disaster Recovery Project. Procedures to be undertaken by the LSSVI to secure preliminary project approval, including determination of level of NEPA review, if required, for each project/program, and other requirements and conditions which must be provided to VIHFA to secure preliminary approval. All project agreements will, at a minimum, also include the following:

1. Statement of work/project description
2. Line-item budget
3. Period of performance, and
4. Milestones and deliverables

Information to be provided by the LSSVI.

Appendix E: Payment Requirements and Draw Request. Form to be provided by VIHFA.

Appendix F: Monthly Performance Report (MPR) /Disaster Recovery Grant Reporting System Requirements. Form to be provided by VIHFA.

Appendix G: Records Requirements and Records Retention.

Appendix H: Board Authorization(s) (if required). To be provided by both VIHFA and LSSVI, if required.

3. IMPLEMENTATION OF AGREEMENT AND ASSURANCES

- A. The LSSVI is responsible for complying with said CDBG-DR and federal regulations and for implementing the Project in a manner satisfactory to the VIHFA and HUD and consistent with any applicable guidelines and standards that may be required as a condition of the VIHFA's providing the Grant Funds, including but not limited to all applicable CDBG-DR Project Administration and Compliance requirements set forth by this Agreement and the Project Agreement (to be attached hereto as Appendix D) and made a part hereof. The VIHFA's providing of CDBG-DR Grant Funds under this Agreement is specifically conditioned on the LSSVI's compliance with this provision and all applicable CDBG-DR regulations, guidelines, and standards, including compliance with 24 CFR 570.900 *et seq.*, governing performance reviews and remedial action.
- B. The LSSVI shall be responsible for requiring its contractors/vendors (and all subcontractor tiers) adhere to all applicable Territory and Federal laws and regulations, and to conduct all necessary monitoring for such compliance. As to laws and regulations applicable to the use of CDBG-DR funds, the LSSVI will execute the Project Agreement(s), to be attached hereto as Appendix D, which shall be deemed a part of, and additional assurances of this Agreement. As to any other laws and regulations that may apply to construction projects, the LSSVI is responsible for determining the applicable laws and regulations and ensuring compliance therewith.
- C. Notwithstanding the foregoing, the LSSVI is responsible for environmental review, decision-making, and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law, the LSSVI agrees, however, that it will not commit any Grant Funds to a project or start any work associated with a project until it has approval from VIHFA, which is charged by HUD with evaluating all CDBG-DR funded projects, and until such time in which HUD approves a certification of compliance with environmental laws and request for release of funds.
- D. The LSSVI agrees to comply with all applicable Federal CDBG-DR, and cross-cutting statutes and regulations as more fully detailed in Appendix B, subject to waivers cited in the applicable Federal Register notices, Department of Housing and Urban Development, Allocations, Common Application, Waivers, and Alternative Requirements for VIHFA receiving CDBG-DR Funds in Response to the 2017 storms.

4. BUDGET

The Subrecipient shall complete all activities in accordance with its budget. A separate project agreement (to be attached hereto as Appendix D) must be submitted by the LSSVI to the VIHFA, prior to taking any action on any proposed project. Each project must receive a preliminary review and approval from VIHFA prior to moving to an environmental review.

The LSSVI must request, in writing to the VIHFA for approval, a revision of the Budget within each Project Agreement or for a reallocation of a Project Cost funds, and Activity Delivery categories outlined within the Project Budget. However, in no case shall any such revisions or reallocations exceed the total allocation of CDBG-DR Funds without prior written consent of the VIHFA and the necessary State and federal consent. All budget costs must be reasonable, eligible and allowable.

5. PERFORMANCE AND TIMELINE REQUIREMENTS

The Subrecipient shall complete the required activities under the Projects, including 100% expenditure of allocated funds, within the timeframes outlined in Appendix D.

The LSSVI agrees to comply with the Projects' draw down request terms and agrees to use best efforts to comply with intermediate benchmarks as outlined in the Project Agreement. **Grant Funds not anticipated to be expended by the outlined deadline, or extended, are subject to recapture and reallocation to other eligible CDBG-DR Projects areas and/or Territorial agencies.**

6. TERM

This Agreement and its terms and conditions shall remain in effect for the period that the Subrecipient has projects funded through CDBG-DR funds as provided through this agreement, including program income. Agreements governing specific projects will be subject to the period of performance outlined in the Project Agreement (Appendix D).

A. Termination/Suspension for Cause

The VIHFA may, upon thirty (30) days advance written notice specifying the date to suspend or terminate this Agreement in whole or in part if the LSSVI materially fails to comply with any term of this Agreement, which shall include, but not be limited, to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may be applicable at any time;
2. Failure, for any reason, of the LSSVI to fulfill in a timely and proper manner the material obligations under this Agreement;

3. Submission of incorrect or incomplete reports to VIHFA, HUD, or their auditors, in any material respect as determined by VIHFA, HUD or their auditors;
4. Ineffective or improper use of CDBG-DR Funds as provided for under this Agreement; and

Notwithstanding anything hereinabove to the contrary, VIHFA agrees that it shall not exercise its right to suspend or terminate this Agreement until it has given written notice to The LSSVI of the alleged non-compliance and has given the LSSVI forty-five (45) days after the LSSVI's receipt of such notice, to correct and/or cure, the alleged noncompliance. The LSSVI may request additional time in writing to correct alleged non-compliance which consent VIHFA agrees not to unreasonably withhold. If the non-compliance cannot be corrected and/or cured, the LSSVI shall, unless the termination or suspension notice directs otherwise, immediately discontinue all activities relating to this Agreement, except as may otherwise be legally required pursuant to a binding commitment to perform.

B. Termination Due to Unavailable Funding

This Agreement is contingent upon the appropriation and release of CDBG-DR funds to the VIHFA to fulfill the requirements of this Agreement. Failure of the LSSVI to approve and provide an approved budget to the VIHFA for fulfillment of this Agreement shall constitute reason for termination of the Agreement by either Party. The LSSVI shall be paid, for all authorized services properly performed and approved prior to termination, including reimbursement to each subrecipient for completion of the LSSVI's approved Project undertaken pursuant to this Subrecipient Agreement, as well as be permitted to draw CDBG-DR Funds in an amount required to fund all essential services, performed prior to termination.

C. Obligations Governing Use of CDBG-DR Funds Survive Termination

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish the LSSVI's obligations governing the use of CDBG-DR funds under applicable statutes, federal notices, and regulations or under this Agreement and/or shall not terminate any of the LSSVI's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following: (1) the duty to maintain and provide access to records; (2) the duty to monitor and report on the use of any CDBG-DR funds expended or awarded in compliance with all terms, conditions and regulations herein; (3) duty to enforce compliance with the terms of CDBG-DR grants; and (4) duty to monitor, collect and manage Program Income, if applicable.

D. Payment upon Termination

Except as in the event of termination or suspension for cause, the LSSVI shall be entitled to payment on approved invoices submitted to the VIHFA no later than thirty (30) days from the date of termination contained within the notice, to the extent payment requests represent

Eligible Activities satisfactorily completed during the term of this Agreement and otherwise reimbursable under the terms of this Agreement.

E. Return of Unused Funds

Unless otherwise agreed upon by the Parties, upon termination of the Agreement, the LSSVI and any subrecipients shall release the commitment of funds for any unused funds to the VIHFA within thirty (30) days of termination and ensure that no CDBG-DR funds are allocated for projects beyond the scope of this Agreement.

7. SECTION 312 OF THE STAFFORD ACT

The VIHFA requires any subrecipient, as a condition for receiving cost reimbursement, to repay the VIHFA any funding the subrecipient has, or later receives, from any other disaster assistance funding source for the Activities it will be receiving CDBG-DR funds.

The LSSVI agrees as a condition of funding to repay the funding if it later receives other disaster assistance funding for the same purposes herein. Additionally, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR Activity, if there is no duplication of benefits of federal funds. This includes programs or activities administered by, but not limited to, the Federal Emergency Management Agency ("FEMA"), the United States Environmental Protection Agency ("EPA"), the United States Department of Transportation ("DOT"), or the U.S. Army Corps of Engineers ("USACE").

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

8. FINANCIAL MANAGEMENT SYSTEM

- A. The VIHFA may review the adequacy of the financial management system of the LSSVI under this Agreement at any time subsequent to the signing of the Agreement. If VIHFA determines that the LSSVI's accounting system under the Agreement does not meet the standards described in this section, additional information to monitor the Agreement may be required by the VIHFA upon written notice to the LSSVI, until such time as the system meets with the VIHFA's approval. The LSSVI will notify VIHFA as soon as practicable if the LSSVI cannot comply with the requirements established in this section of the Agreement.

- B. The LSSVI's financial management system shall be consistent with the standards set forth 24 CFR 85.1 et seq., and 24 CFR 85.20 et seq., and 2 CFR Part 200, Subpart D, Post Federal Award Requirements and Standards for Financial and Program Management, and the requirements for Payment Request in **Appendix E**, and the requirements for Records and Records Retention in **Appendix G**.

- C. The LSSVI shall maintain accurate, current, and complete reports for disclosure of financial results in a format which conform with generally accepted principles of accounting and reporting:
- i. Accounting Records: Maintain records that adequately identify the source and application of the CDBG-DR Funds.
 - ii. Internal Control: Maintain effective internal and accounting controls over CDBG-DR Funds provided to the LSSVI under this Agreement. The LSSVI shall adequately safeguard all such funds and assure that they are used solely for authorized purposes. The LSSVI's records shall distinguish Grant Funds for its Activities from those to be reimbursed to any subrecipient.
 - iii. Budget Control: Provide for the comparison of the actual expenditures or outlays with budgeted amounts.
 - iv. Allowable Costs: Implement procedures to determine the reasonableness and acceptability of costs consistent with this Agreement.
 - v. Source Documentation: Maintain accounting records that are supported by source documentation (such as purchase orders, invoices, timesheets and canceled checks).
 - vi. Disbursement Management: Establish procedures to minimize the time elapsed between the receipt of funds from VIHFA and disbursement by the LSSVI .
 - vii. Use and Reversion of Assets: The use and disposition of immovable property, equipment and remaining CDBG-DR Funds under this Agreement shall be in compliance with all CDBG-DR regulations, which include but are not limited to the following:
 - a. The LSSVI shall return to the VIHFA any Grant Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
 - b. In all cases in which equipment acquired, in whole or in part, with CDBG-DR Funds is sold, the proceeds shall be reviewed to determine if it is Program Income (as defined in 2 CFR Part 200.80), (prorated to reflect the extent to which CDBG-DR Funds received under this Agreement were used to acquire the equipment). Equipment not needed by LSSVI for activities under this Agreement shall be (a) transferred to the VIHFA for the CDBG-DR program or (b) retained by the LSSVI after compensating the VIHFA an amount equal to the current fair market value of the equipment less the percentage of any non-CDBG-DR funds used to acquire the equipment.

9. PROCUREMENT STANDARDS

- A. The LSSVI shall conduct all procurement transactions in a manner providing for full and open competition and comply with VIHFA's procurement regulations consistent with the requirements of 2 CFR Part 200.317, including the need for a cost analysis in advance of procurements and documentation of free and open competition.
- B. Upon request, the LSSVI shall provide VIHFA with draft copies of its procurement documents, (i.e. Requests for Proposals, Invitations for Bids, etc.) for review to ensure compliance with applicable procurement requirements .
- C. Upon request, the LSSVI shall provide VIHFA with copies of its documentation concerning the selection process for contractors/sub-recipients, contracts, subcontracts, and job descriptions, prior to selection and/or execution.
- D. Utilization of Small, Minority and Women's Owned Enterprises.

The LSSVI and its contractors must use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. The LSSVI shall also ensure similar requirements is provided in its contracts utilizing CDBG-DR Funds, etc.

- E. Sole Source Procurement.

The LSSVI shall make all reasonable efforts to avoid sole source contracts. But, when no reasonable, feasible, or cost-effective alternative exists, the LSSVI shall specifically identify all awards of sole source contracts and the rationale or justification for making the award on a sole source basis in reports to VIHFA.

- F. Subrecipient is prohibited from entering into cost-plus a percentage of cost and percentage of construction costs contracts.

10. LABOR STANDARDS

All Contracts executed pursuant to this Agreement shall be subject to the requirements of **Section 3** of the Housing and Urban Development Act of 1968 as amended, 12 U.S.C., 17010. **Section 3** requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

The LSSVI shall also comply with all labor laws (as referenced under 24 CFR 570.603) and make efforts to hire, procure, when possible, minority- or women-owned business enterprises in accordance with Section 8 of the Small Business Act, 15 U.S.C. § 637, as amended.

11. PROFESSIONAL STANDARDS

The LSSVI shall ensure its Contractor/Subcontractor will complete all work in a substantial and workmanlike manner according to standards and practices in the Contractor's/Subcontractor's trade and the work shall conform to all applicable building codes or other codes and regulations which apply to the work to be performed whether or not covered by the specifications and drawings for the work, including any Contractor/Subcontractor registration requirements. Contractor/Subcontractor shall warrant that the final product of contractor's/subcontractor's work shall be fit for the purposes for which it is intended. Contractor/Subcontractor shall warrant against defects in materials and labor for a period of one (1) year from the date of completion and upon acceptance of the work by the LSSVI.

12. PROGRAM AND PERFORMANCE MONITORING

The VIHFA will monitor the performance of the Subrecipient in accordance with the requirements and standards of this Agreement and the stated project goals and milestones. Subrecipient shall provide the VIHFA all necessary reporting information as required. If action to correct substandard performance is not taken within 60 days after being notified by VIHFA, the VIHFA may impose additional conditions on the Subrecipient and its use of CDBG-DR funds consistent with 2 CFR 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

13. DEFECTIVE WORK

The inspection of work shall not relieve the Contractor/Subcontractor of any of its obligations to fulfill the terms and conditions of the Contract as herein prescribed. Defective work shall be made good, and unsuitable materials shall be rejected, notwithstanding that such work and materials have been previously overlooked by the LSSVI and accepted or paid for. If the work or any part thereof shall be found defective at any time before the final acceptance of the whole work, or the final payment therefor, the LSSVI shall ensure that the Contractor shall forthwith make good such defect in a manner satisfactory to the LSSVI and the VIHFA. The Contractor/Subcontractor shall replace, at its own expense, damaged or unsuitable materials with the new material of satisfactory quality.

14. RIGHT TO WITHHOLD

If the Work under any Contract, funded through this Subrecipient Agreement, is not performed in accordance with the terms hereof, the VIHFA reserves the right to withhold out of any payment due to the Contractor/Subcontractor, such amount as may be deemed ample to protect the LSSVI and the VIHFA against loss or to assure payment of claims arising there from, and, at their option. The LSSVI and VIHFA may apply such sum(s) in such a manner as

may be deemed proper to secure their interest or to satisfy such claims. The Contractor/Subcontractor shall be immediately notified in writing in the event that the LSSVI and the VIHFA elect to exercise its right to withhold any amount due to unsatisfactory performance. No such withholding or application shall be made if and while the Contractor gives satisfactory assurance to the LSSVI and the VIHFA that such claims will be paid by the Contractor's insurance carrier, if applicable, in the event that such claim is not successful.

15. INSURANCE

Unless expressly waived in writing by the VIHFA, the LSSVI shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond, or equivalent insurance acceptable to the VIHFA.

16. LIQUIDATED DAMAGES

The LSSVI is expected to assess Liquidated Damages against the Contractor/Subcontractor for scope of work not completed under the terms set forth in any Contract, liquidated damages shall be assessed pursuant to its procurement policies. Liquidated damages shall first be deducted from any contract monies due but not yet paid, to the extent available.

17. FEDERAL LABOR STANDARDS PROVISIONS (DAVIS BACON ACT)

All laborers and mechanics employed on the Project covered by this contract shall be paid 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**, as amended (40 U. S. 276a-276a-5) and shall receive overtime compensation in accordance with, and subject to the provisions of the Contract Work Hours and Safety Standards Act 940 U. S. C. 327332), if applicable. The Contractors and all its sub-contractors shall comply with regulations issued pursuant to the labor standards provisions.

For the duration of this Contract, the LSSVI shall ensure its Contractor and Subcontractors submit copies of weekly payroll forms and cancelled checks to both the LSSVI and VIHFA, or a designated Labor Standards Coordinator.

18. OTHER FEDERAL REQUIREMENTS

The LS further certifies that it will comply with the following mandatory contract provisions and will include these provisions where applicable, in every contract, specifically or by reference, so that such provisions will be binding upon each of its contractors/vendors and ensure the inclusion in all subcontracts.

- A. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq. The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term "building" does not include

privately owned residential structures not leased by the government for subsidized housing programs.

- B. Title 9 of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any federally funded education program or activity.
- C. Title 11 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
- D. Housing for Older Persons Act of 1995 ("110PA") (see 42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older.
- E. It shall require that every newly constructed or altered building or facility (other than a privately-owned residential structure, and certain other limited exceptions) complies with any accessibility requirements required by Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12181 et sec.) and shall be responsible for conducting inspections to ensure compliance with these specifications by any contractor or subcontractor.
- F. Other statutory requirements as outlined in the HUD Rider, attached hereto as Appendix B will be required to attach all contracts executed pursuant to this Agreement.
- G. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with 2 CFR Part 200, subpart F.

19. CONFLICT OF INTEREST

The LSSVI's designees, agents, members, officers, employees, consultants, and other public official who exercises or who has exercised any functions or responsibilities with respect to the Program/Project during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Project, are barred from any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program/Project or in any activity, or benefit there from, which is part of this Agreement at any time during or after such person's tenure.

20. NO PERSONAL LIABILITY OF INDIVIDUAL REPRESENTATIVES

No covenant or representation contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent, or employee of either Party in his or her individual capacity, and neither the officers of either Party nor any official executing this Agreement shall be personally liable with respect to this Agreement or be subject to any personal liability or accountability under this Agreement by reason of the execution and delivery of this Agreement.

21. PROHIBITED ACTIVITY / FUND USE

The LSSVI is prohibited from using, and shall require that its Contractors and Subcontractors, if any, are prohibited from using, the CDBG-DR Funds to be provided herein or personnel employed in the administration of the Project for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. The LSSVI will comply with the provision of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of certain employees.

The LSSVI agrees not to use proceeds from this Agreement to urge any elector to vote for or against any candidate or proposition on an election ballot, nor shall such CDBG-DR Funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Legislature of the U.S. Virgin Islands or any other governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Virgin Islands Legislature or other local governing authority.

The LSSVI shall ensure that its Contractors and Subcontractors, seeking reimbursement 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 or a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. The LSSVI's Contractors and Subcontractors, shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

22. CONTRACTORS / SUBCONTRACTORS

The LSSVI may enter into contracts with third parties for the performance of any part of the LSSVI's duties and obligations in implementing the Projects described in this Agreement and Appendix D. In no event shall the existence of such a contract operate to release or reduce the liability of the LSSVI to the VIHFA for any breach in the performance of the LSSVI's or any Contractor's/Subcontractor's duties.

23. COPYRIGHT

No materials, including but not limited to reports, maps, documents, or plans produced as a result of this Agreement, in whole or in part, shall be available for copyright purposes to any other person. Any such material produced as a result of this Agreement that might be subject to copyright is the property of and all rights shall belong to the Parties, unless the Parties agree otherwise in writing.

Software and other materials owned by the LSSVI or a third party prior to the date of this Agreement and not related to this Agreement shall be and remain the property of the LSSVI or third-party.

The Parties will, where either Party believes necessary, provide information to undertake their responsibilities described herein. All records, reports, documents and other material delivered or transmitted shall remain the property of the transmitting Party and shall be returned, upon request, at termination, expiration or suspension of this Agreement.

24. SECTION 3 COMPLIANCE

The LSSVI shall, to the greatest extent feasible, comply with Section 3 of the Housing and Urban Development Act of 1968, pursuant to 12 USCS 1701u, in the procurement of developers, contractors, and/or other third-party entities for any project or objective outline in this Agreement. The LSSVI's Section 3 Utilization Plan must be submitted to the VIHFA for review and filing upon fifteen (15) days of execution of this Subrecipient Agreement.

25. DRUG FREE WORKPLACE COMPLIANCE

The LSSVI hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended and with 24 CFR 21. Further, LSSVI will endeavor to ensure that Contractors/Subcontractors and any third parties providing Project services are in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR Part 21.

26. APPLICABILITY OF PROVISIONS INCLUDED/EXCLUDED FROM THE AGREEMENT

Failure to expressly reference any applicable federal or State regulation, statute, public law, Executive Order, agency directive or OMB Circular will not exempt either Party from compliance with such applicable law or regulation, and all applicable provisions not included will be deemed as inserted herein.

Likewise, execution of this Agreement will not obligate either Party to comply with any regulation, statute, public law, Executive Order, agency directive or OMB Circular, if not otherwise applicable to the use of the CDBG-DR funds provided herein or to the particular projects performed under this Agreement, even though it may be referenced in this Agreement or in the Appendices.

27. SUBROGATION & ASSIGNMENT

If the LSSVI receives funds from the CDBG-DR Program and whether, before, during or after Project initiation, funds from other sources are provided to the LSSVI for all Activities of the Projects under this Agreement resulting in a potential duplication of benefits regarding the Project funds, the LSSVI agrees to notify VIHFA regarding such potential duplication. As provided in this Agreement in paragraph 7 (Section 312 of the Stafford Act), the LSSVI agrees to reimburse the VIHFA if it later receives other disaster assistance for the same purposes as under this Agreement.

28. NO THIRD-PARTY BENEFICIARY

Nothing herein is intended, and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement. This provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG-DR funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

29. NO ASSIGNMENT

Neither Party may transfer or assign this Agreement or transfer or assign any of its rights or assign any of its duties under the Agreement without the express prior written consent of the other Party. However, if the Parties mutually agree to an assignment, all rights and obligations set forth herein shall inure to the benefit of the Parties and to their respective successors and assigns.

30. DELAY OR OMISSION

No delay or omission in the exercise or enforcement of any right or remedy accruing to either Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

31. SEVERABILITY

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

32. CONFLICTING RULES OR PROCEDURES

Nothing in this Agreement is intended to conflict with federal or Territorial law and directives. If a term or provision of this Agreement is inconsistent with such law or authority, then that term or provision shall be invalid, but the remaining terms and provisions shall remain in full force and effect. In the occasion that two or more applicable rules, regulations, or procedures related to this Agreement conflict with one another, the most proscriptive rule, regulation, or procedure shall apply.

33. NOTICES

Any notice required to be given under, or in connection with this Agreement, shall be in writing and shall be hand-delivered, mailed, emailed or facsimiled. All such communications shall be transmitted to the address or numbers set forth below, or such other address or numbers as may be hereafter designated by either Party in written notice to the other Party compliant with this Section.

To the HFA:

Attn: Ann Hanley
Director
CDBG-DR Division
3202 Demarara Plaza, Suite 200
St. Thomas, VI 00802
E-mail: ahanley@vihfa.gov
Phone: 340-772-4432
Facsimile: 340-775-7913

With Copy To:

Daryl Griffith
Executive Director
Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200,
St. Thomas, VI 00802
E-mail: dgriffith@vihfa.gov
Phone: 340-777-4432
Facsimile: 340-775-7913

To the LSSVI:

Attn: Ms. Junia John-Straker
Chief Executive Officer
[Mail: 516B Hospital Street, Frederiksted, St. Croix, VI 00840-3824](mailto:j.johnstraker@lssvi.org)
[E-mail: j.johnstraker@lssvi.org](mailto:j.johnstraker@lssvi.org)
Phone: (340)772-4099, ext. 21

34. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with all applicable Federal and Territorial laws. Any legal action resulting from the implementation of this Agreement shall be brought and adjudicated in the U.S. Virgin Islands.

Any disputes or misunderstandings that may arise under this Contract concerning the Agency's performance shall first be resolved through amicable negotiations, if possible, between the LSSVI's Project Manager and VIHFA Project Manager indicated in Attachment D, or if necessary, shall be referred to VIHFA's Executive Director and the LSSVI senior executive(s). If such parties do not agree upon a decision within a reasonable period of time,

the parties may pursue other legal means to resolve such disputes, including but not limited to, alternate dispute resolution processes.

35. AMENDMENTS

This Agreement may only be amended in writing and executed by a duly authorized representative of each Party. Amendments shall not invalidate this Agreement, nor relieve or release either Party except as may otherwise be provided.

The VIHFA may, in its discretion, require that this Agreement be amended to conform to federal, or Territorial governmental laws, regulations, guidelines, policies and available funding amounts. If any such amendment would result in a change in the funding, the Activities, or schedule of the Activities to be performed under this Agreement or Grant Funding Sub-Agreement, such changes shall be incorporated by written amendment signed by both the VIHFA and the LSSVI .

36. ENTIRE AGREEMENT

This Agreement and any amendments, exhibits or other formally incorporated documents constitutes the entire understanding and reflects the entirety of the undertakings between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

37. BINDING EFFECT

All the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to, and binding upon, their successors and/or assigns.

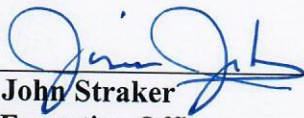
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IN WITNESS WHEREOF: the parties hereto have hereunto set their hands and seals on the day and year first above written.

WITNESSES:

- (1) Arlene White-Elliott
- (2) Weller


LUTHERAN SOCIAL SERVICES OF THE VIRGIN ISLANDS

BY: 
Junia John Straker
Chief Executive Officer
DATE: 6/30/2021

WITNESSES:

- (1) Claudia Pao
- (2) Valdez Shelford

VIRGIN ISLANDS HOUSING FINANCE AUTHORITY

BY: 
Daryl Griffith
Executive Director
DATE: 07/16/2021

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APPENDIX A

GENERAL CONTRACT CONDITIONS

In addition to applying to this Agreement, Agency shall include the provisions of this Section in each Third-Party contract as applicable.

A. INDEPENDENT CONTRACTOR

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. In the event that Agency contracts with third parties, including any Subrecipient or Contractor, to perform any of the services to be performed hereunder, such third parties shall at all times remain an "independent contractor" with respect to the provision of such services. The VIHFA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, with respect to such third-party contracts or Grant Fund Sub-Agreements.

B. HOLD/HARMLESS/INDEMNITY CONTRACTORS/SUBCONTRACTORS

To the extent that Agency is authorized to and utilizes the services of any third parties in performance of its duties and obligations in implementing the Projects described in this Agreement, any contract entered into shall contain a provision that the Contractor and/or Subcontractor shall hold Agency and the VIHFA harmless and defend and indemnify the Agency and the VIHFA against any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor and/or Subcontractor's performance or nonperformance of the services.

C. MECHANIC'S LIEN

Contractor agrees to protect, defend, and indemnify Agency and VIHFA from any claims for unpaid work, labor, or materials with respect to Contractor's Performance. Final payment shall not be due until the Contractor has delivered to the Agency a complete release of all liens for work completed arising out of Contractor's Performance or a receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to Agency indemnifying Agency against any and all liens.

D. WORKER'S COMPENSATION

Agency shall require its Contractors/Vendors to provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of any projects undertaken thereto under this Agreement.

E. PRELIMINARY INSPECTION

Prior to request for final inspection, the Contractor shall notify both VIHFA and LSSVI of the anticipated completion date so that any major defects or deficiencies may be pointed out to the Contractor for correction prior to the final inspection.

F. FINAL INSPECTION

The Scope of Work shall be considered complete upon acceptance by Agency after a final inspection conducted by LSSVI and/or VIHFA (upon VIHFA's request to also conduct a final inspection).

G. MAINTENANCE OF AREA/FINAL CLEAN-UP & REMOVAL OF DEBRIS

Contractor agrees to maintain the work area free from major obstructions/hazards to the greatest extent possible, and to always ensure safe access to the project site. Contractor agrees to remove all construction debris and surplus material from the property. The Contractor shall remove all construction related debris material from the construction site.

H. INSURANCE & BONDING

Agency shall require a Contractor to maintain liability insurance for protection against claims for damages because of bodily injury or death, claims for damages, to property which may arise out of or result from the Contractor's operation under a contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them. This specific coverage amount for each project shall be identified in the ensuing contract for each specific project and the Contractor shall, upon request, present the Agency with a certificate of such insurance.

I. AFFIRMATIVE ACTION PLAN

In order to comply with **Section 3** and **Executive Order 11246**, the U.S. Department of Housing and Urban Development requires that all contractors develop and implement an Affirmative Action Plan. This plan is a series of forms and statements, which shows specific steps taken by the contractor to promote Equal Opportunity and the utilization of area residents and business in the implementation of this Contract. This plan must be submitted to the Agency and VIHFA.

J. SAFETY

Agency shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of its performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and the Agency shall take or cause to be taken such additional safety and health measures as the Agency may determine to be reasonably necessary.

The Agency shall provide safety insurance for its employees and shall require all Contractors, and Subcontractors to provide safety insurance for their employees.

K. SECTION 106 COMPLIANCE

The Contractor shall ensure that areas of archaeological sensitivity will not be disturbed during construction. No heavy equipment shall be used in any area which has been determined to be an area of archaeological sensitivity. The Contractor agrees that, if there is any question relative to the archaeological value or historic designation of the site in general or any specific features on the site, it shall seek guidance from the State of Historic Preservation Office of the Department of Planning and Natural Resources before undertaking any work.

L. CONTRACTOR'S REPRESENTATIONS

The Contractor shall warrant that it is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract. Contractor shall further represent that it is fully equipped, competent, and capable of performing the work and is available to perform such work.

The Contractor will warrant that it, and any subcontractors, is eligible to receive contract awards using federally appropriated funds and that it is not suspended or debarred from entering into contracts with any federal agency.

In the event the Contractor, or sub-contractor, misrepresents its eligibility to receive contract awards using federal funds, Agency agrees that said contractor or sub-contractor shall not be entitled to any payment for any work performed under

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Program: Public Services and Public Facilities

this Contract and that it shall require the contractor or sub-contractor to promptly reimburse any progress payments heretofore made.

Nevertheless, this provision does not discharge Agency or VIHFA from their respective due diligence and undertaking its own independent search under "SAMS" to determine a Contractor's or sub-contractor's eligibility to receive contract awards using federal funds.

M. FALSE CLAIMS

The Contractor/vendor will warrant that it shall not, with respect to this Contract, make or present any false claim upon or against the Agency. The Contractor will acknowledge that making such a false, fictitious, or fraudulent claim is an offense under the Virgin Islands law (cite provision).

The Contractor will acknowledge that it's Contract is funded, in whole or in part, by federal funds. The Contractor will warrant that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious or fraudulent. The Contractor will acknowledge that making such false, fictitious, or fraudulent claim is a federal offense.

APPENDIX B

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>.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement 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 Agreement shall forthwith be amended in writing to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE

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

3. BREACH OF CONTRACT TERMS

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

4. REPORTING REQUIREMENTS

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

5. ACCESS TO RECORDS

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

6. MAINTENANCE/RETENTION OF RECORDS

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

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

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

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

8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. 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, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

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

15. CONFLICTS OF INTEREST

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

16. SUBCONTRACTING

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

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

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

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

17. ASSIGNABILITY

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

18. INDEMNIFICATION

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

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

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

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

21. DAVIS-BACON ACT

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

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

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

22. TERMINATION FOR CAUSE

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 to VIHFA from the Subcontractor is determined.

23. TERMINATION FOR CONVENIENCE

VIHFA may terminate this contract at any time by giving at least thirty (30) 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

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 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, 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

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 C.F.R. chapter 60).

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

- A. The Contractor/Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/Subcontractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor/Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor/Subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

- C. The Contractor/Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Contractor/Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor/Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F. The Contractor/Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- G. In the event of the Contractor's/Subcontractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor/Subcontractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- H. Contractor/Subcontractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such contractor/subcontractor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor/Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES

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

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

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

that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS

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 (EPA) 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 EPA pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Subcontractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING

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

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

- (1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) *A performance bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's/Subcontractor's obligations under such contract.
- (3) *A payment bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

- 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 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 based on race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Please visit http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11868.pdf for more information.

32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

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

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

33. PROCUREMENT

The Uniform Guidance procurement requirements (2 C.F.R. Part 200, Subpart D) went into effect on July 1, 2018. These requirements are applicable to CDBG-DR funded projects, or as provided by 83 Federal Register 5844 VI A(1)(b)(2) permits a state grantee to elect to follow its own procurement policy. These policies and procedures ensure that Federal dollars are spent fairly and encourage open competition at the best level of service and price.

Standards for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services are outlined in Title 31, Chapter 23, Sections 231-251 of the Virgin Islands Code and Title 31, Chapter 23, of the Virgin Islands Regulations.

34. CHANGE ORDERS TO CONTRACTS

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

35. ENVIRONMENTAL REVIEW

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

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

36. LEAD BASED PAINT

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

37. ENVIRONMENTAL REVIEW RECORD

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

38. FLOOD INSURANCE REQUIREMENTS

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

39. DUPLICATION OF BENEFITS

CDBG-DR funding intends to address the unmet needs of a community. The funds are supplemental to primary forms of assistance, including private insurance and FEMA funds. 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.

49. COMPLAINTS AND APPEALS

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

50. MONITORING

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

51. PROCUREMENT OF RECOVERED MATERIALS

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

APPENDIX C

SPECIAL CONDITIONS

1. GENERAL

VIHFA has determined specific risks associated with this grant and therefore has set forth additional grant terms and conditions for this subrecipient. These Special Conditions are attached to, and incorporated into, this Agreement. The Special Conditions may add, delete, or modify the overall Agreement. By signing the Agreement, the LSSVI agrees to these special conditions for the receipt of CDBG-DR funds, which may be amended from time to time. In the event of an inconsistency, these Special Conditions shall take precedence over the terms and conditions of this Agreement to the extent of that inconsistency.

2. AUTHORITY TO USE GRANT FUNDS (RELEASE OF FUNDS)

- A.** No costs shall be incurred/disbursed until after the LSSVI has received a written Notice to Proceed from VIHFA that the LSSVI (Agency) has satisfied the specific requirements listed herein for the release of CDBG-DR funds. The LSSVI may submit a request for Authority to Use CDBG-DR Funds for architectural and engineering activity prior to the release of other funded activities (if applicable).
- B.** The LSSVI shall meet the required Special Conditions within ninety (90) days after the execution of this Subrecipient Agreement, unless otherwise stated herein, after the execution of the Subrecipient Agreement.
- C.** The LSSVI shall submit to VIHFA a "Request for Authority to Use CDBG-DR Funds (Release of Funds)" and will be required to submit the following supporting documentation:
 - (1) Environmental Review: The Subrecipient shall not commit funds or begin work on any project with the intention of seeking reimbursement through VIHFA prior to the completion of environmental review requirements.
 - a.** **This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by [the participating jurisdiction, insular area, or state recipient] of an approval of the request for release of funds and certification from the U.S. Department of Housing and Urban Development [or the state of ...] under 24 CFR Part 58. The provision of any funds to the project is conditioned on the [participating jurisdiction, insular area, or state recipient's] determination to proceed with, modify or cancel the project based on the results of the environmental review.**
 - b.** Submit an annual Audit Certification form to VIHFA. The form will be provided by VIHFA.
 - c.** The Subrecipient must attend and participate in a mandatory HUD OIG training provided by HUD's Office of the Inspector General prior to the receipt and expenditure of funds.

- (2) Other Special conditions in accordance with CDBG-DR are as follows, for those provisions requiring document submissions, all submissions shall be provided within ninety (90) days from the date of execution by VIHA's Executive Director:
- a. Under the CDBG-DR regulations, VIHFA is responsible for ensuring that CDBG-DR funds are used in accordance with all program requirements and projects are eligible for CDBG-DR funding. To meet eligibility, each project must meet the following: (1) Be a CDBG-eligible activity (or be eligible under a waiver or alternative requirement under 83 FR 5844 or 83 FR 40314); (2) meet a national objective; and (3) address a direct or indirect impact from the major disaster in a Presidentially declared county. Each project will have to undergo an eligibility determination and receive confirmation of eligibility prior to the receipt of funds.
 - b. The Subrecipient shall not receive any funding without the completion of the CDBG-DR Application and providing all supporting documentation to VIHFA. This includes all standalone CDBG-DR funded projects, as well as projects seeking non-Federal share match funding. The Subrecipient shall complete an Amended Application, if there is a change to a project that requires reallocation of budgeted funds or an addition of funds or change in project scope.
 - c. The Subrecipient shall provide an updated organizational chart reflecting any vacant positions and the titles of those positions to the VIHFA prior to any funding disbursement/reimbursement being paid to the Subrecipient. The Subrecipient shall also provide a letter explaining any timeline and plans to fill any vacant positions and/or augment existing staff to assist in the administration of DR grants prior to the disbursement/reimbursement of funds.
 - d. Prior to any funding disbursement/reimbursement of funds being paid to the Subrecipient; the Subrecipient shall provide a letter to VIHFA explaining any plans to augment existing staff to assist in the administration of CDBG-DR grants.
 - e. The Subrecipient shall notify VIHFA of all procurement activities and provide a copy of its procurement solicitation for review and approval.
 - f. The Subrecipient must notify VIHFA of all procurement events and share all procurement documents (including draft contract) for review to ensure compliance with CDBG-DR funded requirements prior to the start of its procurement process.
 - g. All procurements issued and contracts executed shall include the federal cross-cutting measures that are applicable to the CDBG-DR program.
 - h. Provide a 2020 Internal and Single (A133) Audit or a schedule when the audits will be completed. Provide an explanation for any given year audits were not required due to the threshold.
 - i. Provide a plan on how CDBG-DR funds will be segregated from other funds LSSVI

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Program: Public Services and Public Facilities

receives/manages. Identify where this is emphasized in the Accounting Policy and Procedures.

- j. Submit an annual Audit Certification form to VIHFA. The form will be provided by VIHFA.

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APPENDIX D

PROJECT AGREEMENTS

- a) Project Agreement(s) providing a Description, Scope and Budget for the implementation of a project in response to Hurricane(s) Irma and Maria under the Community Development Block Grant Disaster Recovery Project.
- b) Procedures to be undertaken by the LSSVI to secure preliminary project approval, including determination of level of NEPA review (if required) for each project/program.
- c) Other requirements and conditions which must be provided to VIHFA to secure preliminary approval.

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