

## LEASE AGREEMENT

This Lease is made between the **2-B King Street, LLC.; c/o The Gary J. Gorman Legacy Trust of 200 N. Main Street, Oregon, WI 53575**, herein called "Landlord", and the **Virgin Islands Housing Finance Authority of 100 Lagoon Complex, Suite 4, Frederiksted, St. Croix, VI 00840**, herein called "Tenant".

### W I T N E S S E T H

That in consideration of the rents to be paid and the covenants and agreements to be performed by the parties, and the parties intending to be legally bound hereby, the Landlord does hereby lease and let, and the Tenant does hereby lease and rent, **2-B King Street, First Floor, FR, Frederiksted, St. Croix, V.I.**

#### 1. PREMISES.

1.(1) Landlord hereby leases to Tenant, and Tenant hereby leases and rents, in an AS IS condition and/or per attached inventory, and on such further terms and conditions set forth herein, the following described property:

**2-B King Street  
First Floor  
Frederiksted, St. Croix, VI**

#### 2. TERM OF LEASE

2.(1) The term of this lease shall be for a period of Twelve (12) months commencing on, and made retroactive back to, March 1, 2021, and terminating on February 28, 2022. Tenant shall vacate the premises at or on the date the lease terminates. Landlord hereby grants to Tenant, and Tenant shall have, the option to renew this lease for one (1) additional term of one (1) year provided Tenant has not defaulted hereunder and has faithfully kept, maintained, and preserved the demised premises and kept all the conditions binding upon Tenant contained herein.

#### 3. RENTAL AND SECURITY DEPOSIT

3.(1) The rent payable under this Lease for the Twelve (12) month term is as follows:

1<sup>st</sup> term:                    March 1, 2021, to February 28, 2022, is: **\$55,875.00**

3.(2) Tenant covenants and agrees to pay Landlord rentals due hereunder in equal monthly installments during the Twelve (12) month term of the lease as follows:

1<sup>st</sup> term: March 1, 2021, to February 28, 2022 , is: **\$4,656.25 per month**

3.(3) Rent and security deposit shall be paid via wire transfer as follows:

**Account Name: Gary J. Gorman Legacy Trust**  
**Bank: BMO Harris N.A., One Main Street, Madison, WI 53703**  
**ABA #: 071000288**  
**Account #: 4816122044**

Rent is due on the 1st day of each month, in advance, by hand delivering or mailing same to the address noted above, or to such other places as Landlord shall from time to time designate in writing. Any rental payment that is not paid within five (5) days of its due date shall accrue a late fee of \$10.00 per day.

3.(4) Landlord acknowledges receipt of the sum of **\$4,656.25 as a security deposit** for Tenant's faithful performance and observance by Tenant of the terms, provisions and conditions of this lease. It is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease including, but not limited to, the payment of rent and additional rent, Landlord may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease including, but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other reentry by Landlord. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions and covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the lease and after delivery of the entire possession of the demised premises to Landlord. Landlord has the right to commingle the security deposit with other funds. The security deposit shall not bear interest.

3.(5) It is expressly agreed and understood that should Tenant within five (5) business days after expiration or termination of this lease not remove from the leased premises, all equipment, fixtures and other property belonging to Tenant, then Landlord may apply whatever amount of the security deposit is necessary to remove and store said items away from the leased premises. Both parties agree that Landlord has no duty to store any items left in the premises for more than five days after expiration of the lease. Since Landlord's removal of this property will be necessitated by Tenant's failure to remove said property within the time allowed, Tenant agrees that Landlord shall not be

responsible for any damage to said property. In the event that Landlord does store Tenant's items, and Tenant does not retrieve any stored property within thirty (30) days after expiration or termination of the lease, then Landlord may dispose of the same in its sole discretion, including, without limitation, sale and application of resulting proceeds to any sums owed to Landlord by Tenant.

#### 4. USE OF PREMISES

4. (1) Tenant shall use the leased premises solely for the operation of an **office**. Tenant shall comply with all fire, sanitary, health and safety regulations.

4. (2) Tenant shall control music and noise emanating from the demised premises so as to prevent any unreasonable disturbance to other tenants and occupants of No. 2-B King Street, Frederiksted, St. Croix, V.I.

#### 5. ALTERATIONS AND ADDITIONS BY TENANT

5.(1) Tenant shall not make any alterations, additions, or improvements to the structure or foundation of the leased premises without the prior written consent of Landlord, and any such alterations, additions or improvements shall be at Tenant's sole expense and not at the expense of Landlord. Tenant must obtain the necessary permits from the appropriate authorities, and approval from the Fire Department, for whatever alterations, additions, and improvements are to be made on the leased premises by Tenant. Structural alterations must only be made under the supervision of a licensed engineer or licensed contractor. Any permanent alterations, additions and improvements shall, unless Landlord elects otherwise, become the sole property of the Landlord upon the expiration of this Lease.

5.(2) In the event Landlord elects otherwise, then such alterations, additions, or improvements made by Tenant upon the premises as Landlord shall select, shall be removed by Tenant and the premises restored to their original condition at Tenant's sole expense prior to the expiration of this lease.

#### 6. MAINTENANCE AND REPAIRS

6.(1) Tenant shall take good care of the leased premises and shall be responsible for and shall pay for all repairs and maintenance, except structural repairs. Tenant shall maintain said premises, including the Outdoor Patio Area, in good repair and in a clean and orderly condition at all times. Any alterations, improvements or work which Tenant causes to be done on said premises shall be paid for by Tenant when made and Tenant shall not permit a lien to be filed against said premises for any labor or material done or furnished in making such alterations, repairs or improvements. Tenant agrees to surrender, at the end of the term or earlier termination of this Lease, the said premises in as good order and condition as when received.

6.(2) Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair, and the failure to so report such defects shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such defects. Landlord shall have no obligation to make repairs which are its responsibility pursuant to Section 6.(1) until it has received such written notice from Tenant identifying the problem. Landlord shall make such repairs within a reasonable time after receiving such written notice from Tenant.

6.(3) Common Area Expenses. Landlord shall clean the common areas of the Premises but is not responsible for the removal of Tenant's trash or other debris of any kind.

## 7. SUBLETTING AND ASSIGNMENT

7.(1) Tenant shall not assign, sell, mortgage, pledge, or in any manner encumber or transfer this lease or any interest therein, or sublet the leased premises or any part or parts thereof, or permit occupancy of all or any part thereof by anyone with, through or under him, without the prior written consent of Landlord, which Landlord may grant or withhold in its sole and absolute discretion. The term "sublet" shall be deemed to include but not be limited to the granting of licenses, concessions and any other rights of occupancy for any portion of the leased premises.

7.(2) Notwithstanding the provisions of the preceding paragraph of this lease, should Landlord, at Tenant's request, grant in writing permission to sublet or assign this lease, Landlord reserves the right to review the rent, security deposits, covenants, agreements, terms and condition of this lease, and adjust the same as Landlord, in its sole discretion, deems advisable.

## 8. INSURANCE

8.(1) Tenant shall pay for and maintain public liability insurance sufficient to provide complete protection to Landlord from any and all liability claims arising from or related to the space leased to Tenant. Public Liability Insurance shall be in the amount of \$100,000.00 per accident. All policies shall list Tenant and Landlord as insureds and shall provide for the insurer to notify Landlord in writing at least ten (10) days prior to cancellation or refusal to renew such policies. Tenant shall furnish Landlord with appropriate evidence of said insurance coverage prior to the execution of this Lease. At least fifteen (15) days prior to the expiration or termination of any policy, Tenant shall deliver to Landlord appropriate evidence that such insurance has been renewed or replaced, if Tenant shall have exercised its its option to renew. Upon Tenant's failure to deliver such evidence, Landlord may, at its option, obtain such insurance, and the cost thereof shall be paid as additional rent due and payable upon the next ensuing rent day.

8.(2) Tenant shall not begin to operate any business from the leased premises before proof of insurance coverage that is required under the preceding paragraph has been presented to the Landlord.

8.(3) Tenant agrees to procure and maintain its own premises' insurance to cover the alterations, additions and improvements, and contents installed on or upon the leased premises by Tenant at Tenant's sole and separate expense.

#### 9. INDEMNIFICATION OF LANDLORD

9.(1) Tenant covenants and agrees to hold Landlord harmless from all losses suffered by Tenant from fire, flood, hurricane, windstorm, and earthquake including, but not restricted to, losses incurred through water or power failure, plumbing failure, or any other loss.

9.(2) Tenant covenants and agrees to save Landlord harmless from any and all actions, suits, damages, penalties, claims or demands of whatsoever kind or nature (hereinafter called "claim") that may be made against Landlord or the leased premises arising out of or in any way connected with the occupation or use of the leased premises, including but not limited to, any failure of Tenant to keep or perform each and all of the covenants, agreements and conditions to be kept and performed by it hereunder. Tenant shall defend Landlord from and against each and every claim to the end and intent that the Landlord shall suffer no loss or costs, including reasonable attorney's fees, of whatever kind on account of the assertion of any such claim.

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

9.(4) Tenant shall occupy the premises at its own risk, and Tenant agrees that all dangerous places and defects upon said premises, if any, and excepting any that may be structural, are to be remedied and made secure and kept in such condition by Tenant. In any event, Tenant will not hold Landlord liable for any loss or interruption of business.

The foregoing provisions of this section 9 (as well as any other provisions dealing with indemnity and the like by the Tenant or the Landlord) shall be deemed to be modified in each case by the insertion in the appropriate place of the language: "except as otherwise provided by applicable law and based upon the availability of funds that permitted by law to be used for this purpose."

## 10. UTILITIES

10.(1) Tenant agrees to pay all charges for monthly pest control service, gas, garbage fee, power, water, cable and telephone, or other utilities or services used, rendered or supplied upon or in connection with the leased premises, and shall save Landlord harmless against any liability or damage on such account.

## 11. PARTIAL OR TOTAL DESTRUCTION OF PREMISES.

11.(1) It is understood and agreed that if the premises hereby leased are damaged or destroyed in whole or in part by fire or other casualty during the term of this lease, the rent herein provided for shall abate entirely if the entire premises are untenable; provided however that there shall be no abatement of rent if such fire or other cause damaging or destroying the leased premises shall result from the negligence or willful act of Tenant, its agent, or employees. If the damage to the property is more than one-half of the replacement value thereof, then Landlord shall have the option of determining whether or not it shall repair and restore the premises. If landlord elects not to repair or restore the property then this lease shall terminate as of the date of the fire or casualty which option shall be exercisable by Landlord per written notice to Tenant.

## 12. DEFAULT

12.(1) Tenant covenants and agrees, without any previous demand therefor, to pay the specified rental at the times and in the manner herein provided. Any rental payment that is not paid within five (5) days of its due date shall accrue a late fee of \$10.00 per day. Time is deemed by both parties to be of the essence of this lease. Tenant shall be assessed a penalty of \$50.00 for every check returned to Landlord for insufficient funds. In such event, the unpaid rent shall also accrue late charges, as described above, until a valid check, or cash, is presented to Landlord.

12.(2) Notwithstanding provisions of this lease, if Tenant fails to pay all of the said rent within five (5) days after it is due, or in the event of any breach on the part of the Tenant of any covenant herein which remains uncured as provided in paragraph 12.(4) hereof, Landlord may, at its option, upon three days prior written notice to Tenant, declare this lease at an end and reenter and repossess the premises with or without resort to legal proceedings, remove all of Tenant's property therefrom and store said property in a warehouse or at another place of Landlord's choosing, at Tenant's expense, holding Tenant liable for any rental due. Except for UCC liens granted to financial institutions, Landlord shall have a first lien paramount to all others on every right and interest of Tenant in and to this lease, on any improvements on or hereafter placed on the leased property, and on all the furniture, fixtures, furnishings and other personal property of Tenant which are or may be put on the leased property, as security for the payment of rent herein

reserved. The lien hereby created may be enforced, the law permitting, by self-help, repossession, distress, foreclosure, or otherwise, at the election of Landlord.

12.(3) At its option, Landlord may take possession of the premises and rent the same for the account of Tenant, holding Tenant liable for any deficiency in rental arising during the term of this lease.

12.(4) In the event of any breach of any of the covenants and agreements on the part of the Tenant, other than payment of rent, Landlord shall give notice to Tenant of such breach or default. Should Tenant fail to cure such default within ten (10) days of the posting of such notice, or the receipt of same, Landlord may, at its option, declare the lease at an end and reenter and repossess and/or re-let the premises as above described.

12.(5) If Landlord files an action to enforce any covenant of this lease, or for breach of any covenant herein, Tenant agrees to pay Landlord reasonable attorney's fees for the services of Landlord's attorney in the action, should Landlord prevail.

### 13. LANDLORD NOT RESPONSIBLE FOR TENANT OR TENANT'S BUSINESS

13.(1) There shall be no liability on the part of Landlord to Tenant or Tenant's business by reason of any repairs, improvements, maintenance, or casualty damage to the premises. Landlord, or its agents, shall not be liable for any loss or damage to property of either Tenant or its customers. Landlord, or its agents shall not be liable for any injury or damage to persons, property or business resulting from fire, explosion, electricity, water, or the failure of same, rain or leaks from any part of said building, or from the pipes, appliances or plumbing works, or from any other place, or by dampness, or by any other cause of whatsoever nature, nor shall Landlord or its agents be liable for any damage caused by other tenants or persons in said building or caused by operations in construction of any private, public or quasi-public work, including renovations, improvements, and repairs to the lease premises or any portion of the building of which it is a part. Nor shall Landlord be liable for any latent defect in the demised premises or in the building of which they form a part.

### 14. COVENANT OF QUIET ENJOYMENT

14.(1) Landlord covenants that Tenant, on paying the rentals and keeping, observing and performing all of the other terms, conditions, covenants, provisions, and agreements herein contained on the part of Tenant to be kept, observed and performed, shall during the term granted herein, peaceably and quietly have and hold the leased premises, subject to the terms, covenants and conditions hereof.

## 15. INSPECTION AND SHOWING

15.(1) Landlord shall have the right to enter upon the leased premises at all reasonable hours for the purpose of inspecting the same or to make any repairs deemed by Landlord essential to the building. If Landlord deems that repairs are necessary, which repairs are the obligation of Tenant pursuant to the terms of this lease, Landlord may demand that Tenant make the repairs, and if Tenant refuses or neglects to forthwith commence and complete such repairs with reasonable dispatch, then Landlord may make or cause to be made such repairs and shall not be responsible for loss or damage that may accrue to Tenant's stock or business by reason thereof. If Landlord makes or causes to be made such repairs, then Tenant shall forthwith on demand pay to the Landlord the cost thereof with interest at the rate of nine percent (9%) per annum. If Tenant defaults in such payment, then Landlord shall have the remedies provided in Section 12 hereof.

15. (2) Landlord's right of entry shall also include the showing of the property for sale or for rent. Landlord reserves the right to put up a "For Sale" or "For Rent" signs in such places on the premises as it may elect.

## 16. SIGNS

16.(1) Landlord reserves the right to control the aesthetic quality of any and all signs placed along or adjacent to the exterior of the demised premises. No such sign or advertisement shall be annexed or otherwise affixed to the premises without the prior written approval of Landlord and the Historic District Commission.

## 17. HOLDING OVER

17.(1) If Tenant remains in possession of the Premises after the expiration of the term of this Lease or after any permitted termination of this Lease by Landlord, without the prior written consent of the Landlord, then such possession shall be subject to all of the obligations imposed upon Tenant by this Lease except that the tenancy shall be from day to day and the amount of rent shall be a daily amount based upon Seventy Five Dollars (\$75.00) per day. There shall be no renewal of this Lease by operation of Law. Nothing contained in this paragraph shall be construed as a consent by the Landlord to the possession of the Premises by Tenant after the expiration of the term of this Lease or any permitted termination of the Lease by Landlord. Tenant shall indemnify and hold harmless Landlord from and against any and all claims for damages by any other tenant to whom Landlord shall have leased all or any part of the leased Premises effective upon the expiration or termination of this Lease. Any holdover with the express written consent of Landlord shall thereafter constitute this Lease to be a Lease from month to month at such amount as has been agreed upon by Landlord and Tenant.



## 18. RIGHTS CUMULATIVE

18.(1) It is agreed that each and every of the rights, remedies, and benefits provided by this lease shall be cumulative, and shall not be exclusive of any other said rights, remedies and benefits allowed by law.

## 19. NON-WAIVER

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

## 20. THIS LEASE

20.(1) It is agreed that Landlord has not made any statements, promises, or agreements, or taken upon itself any engagement whatever, in conflict with the terms of this lease, or that in any way modifies, varies, alters, enlarges, or invalidates any of its provisions, unless such be in writing, signed by the Landlord, notarized and delivered to Tenant at or after execution of this lease, and that no obligations of Landlord shall be implied in addition to the obligations herein expressed.

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

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

20.(4) Tenant represents that it has examined the leased premises to her satisfaction and accepts them in their present condition "AS IS", and agrees there are no representations on the part of Landlord or its agents as to the present or future condition of said premises that in any way varies or enlarges the provisions of this lease.

## 21. ARBITRATION

21.(1) Except as set forth in Paragraph 21.(2) below, any dispute, difference or question which shall arise under or in connection with this Lease shall be resolved by final and binding arbitration upon application by either party, and the parties specifically waive any and all rights they may have to seek a remedy through any system of resolution, including without limitation a court suit, except for arbitration. Such arbitration shall be conducted in English on St. Croix, United States Virgin Islands, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. In consideration of the parties' waiver of a judicial forum, it is agreed that the decision of the arbitrator shall be final and binding upon Landlord and Tenant and a judgment thereon may be entered in any court of competent jurisdiction in the U.S. Virgin Islands. The arbitrator shall have the right to award costs and expenses, including reasonable attorney's fees, in favor of the prevailing party.

21.(2) The Arbitration provision contained in Paragraph 21.(1) above shall not be interpreted or construed to prevent the Landlord from filing and prosecuting a forcible entry and detainer action and exercising any other rights and remedies available to Landlord for a default by Tenant under this Lease for failing to pay all or any portion of the Rent or Additional Rent. The parties expressly agree that the arbitration provisions shall not apply to such a monetary default by Tenant.

## 22. NOTICE

22.(1) Whenever under this lease a provision is made for notice of any kind, it shall be deemed sufficient service thereof, unless otherwise provided for herein, if such notice is in writing addressed to the party's name on the signature page of this lease and sent by registered mail to the following addresses:

### NOTICE TO LANDLORD:

Gary J Gorman Legacy Trust  
200 N. Main Street  
Oregon, WI 53575

### NOTICE TO TENANT:

Virgin Islands Housing Finance Authority  
ATTN: Daryl Griffith  
100 Lagoon Complex  
Suite 4  
Frederiksted, VI 00840

### 23. FEDERAL CROSS-CUTTING MEASURES

23.(1) All contracts to be funded under the CDBG-DR program requires the inclusion of federal cross-cutting requirements as part of the conditions of the contract. These federal cross-cutting requirements are attached hereto, and incorporated herein, as "Appendix A".

### 24. AVAILABILITY OF FUNDS

24.(1) Tenant's performance and obligation to pay and indemnify Landlord under this Lease is contingent upon the availability of applicable disaster recovery funds at the time payment must be made. Tenant shall be the final authority as to the availability of funds for this Lease and as to what constitutes "applicable funding" to complete this Lease. If any such funds are not made available for the Lease purpose, such event will not constitute a default on Tenant. Tenant will notify Landlord in writing at the earliest possible time if funds are not appropriated or available and said lease should terminate sixty (60) days after Tenant's written notification without any further obligation and liability due under this lease. The cost for services rendered under this Lease to be paid is not eligible for reimbursement from any other funding source.

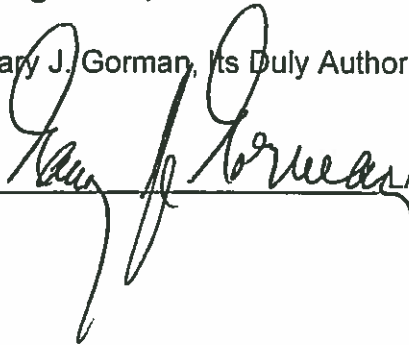
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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year herein first above written.

Signed this 2nd day of March 2021.

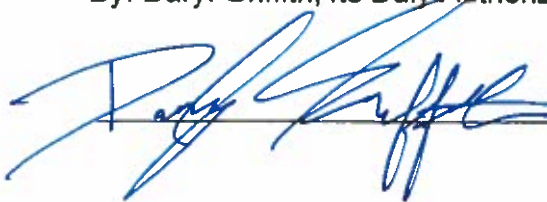
**2-B King Street, LLC**

By: Gary J. Gorman, Its Duly Authorized Agent

  
\_\_\_\_\_  
LANDLORD

**Virgin Islands Housing Finance Authority**

By: Daryl Griffith, Its Duly Authorized Agent

  
\_\_\_\_\_  
TENANT

## APPENDIX "A"

### 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>. However, because of the landlord tenant relationship, sections deemed not applicable to the landlord tenant relationship will not be applicable to this lease.

#### 1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

#### 2. STATUTORY AND REGULATORY COMPLIANCE

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

#### 3. BREACH OF CONTRACT TERMS

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

#### 4. REPORTING REQUIREMENTS

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

#### 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 3 years following the date of final payment and close-out of all pending matters related to this contract.

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

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

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

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

8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

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

9. ENERGY EFFICIENCY

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

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

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

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

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor/Subcontractor 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:

- A. Placing unreasonable requirements on firms in order for them to qualify to do business,
- B. Requiring unnecessary experience and excessive bonding,



- C. Noncompetitive pricing practices between firms or between affiliated companies,
- D. Noncompetitive awards to consultants that are on retainer contracts,
- E. Organizational conflicts of interest,
- F. 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
- G. 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

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

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 the VIHFA may withhold any payments to the Contractor/Subcontractor for the purpose of set-off until such time as the exact amount of damages due to the VIHFA from the Subcontractor is determined.

23. TERMINATION FOR CONVENIENCE

The VIHFA may terminate this contract at any time by giving at least 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 in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant

Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. EXECUTIVE ORDER 11246

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

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

- A. The Contractor/Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/Subcontractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor/Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor/Subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor/Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Contractor/Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor/Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

- F. The Contractor/Subcontractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- G. In the event of the Contractor's/Subcontractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor/Subcontractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the 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 with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

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

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

nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING

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

- A. 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.
- B. 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.
- C. 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:



- A. 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.
- B. 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.
- C. 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 on the basis of

race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

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

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

33. PROCUREMENT

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

34. CHANGE ORDERS TO CONTRACTS

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

35. ENVIRONMENTAL REVIEW

Every project undertaken with Federal funds, and all activities related to that project, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 C.F.R. § Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR

ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any Federal funds can be accessed for program-eligible activities.

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

36. LEAD BASED PAINT

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

37. ENVIRONMENTAL REVIEW RECORD

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

38. FLOOD INSURANCE REQUIREMENTS

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

39. DUPLICATION OF BENEFITS

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

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

40. ANTI-FRAUD, WASTE AND ABUSE CHECKS

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

41. AFFIRMATIVELY FURTHERING FAIR HOUSING

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

42. DRUG FREE WORKPLACE

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

#### 43. TIMELY DISTRIBUTION OF FUNDS

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

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

#### 44. PROPERTY MANAGEMENT AND DISTRIBUTION

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

45. LIMITED ENGLISH PROFICIENCY

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

46. PERSONALLY IDENTIFIABLE INFORMATION

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

47. UNIFORM RELOCATION ACT

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

48. RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN.  
Per Section 104(d) of the Housing and Community Development Act of 1974 § 42.325

(a) Certification.

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

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

(b) Plan contents.

- (1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in parts 92 and 570 of this title, to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities.
- (2) The plan shall provide for relocation assistance in accordance with § 42.350.
- (3) The plan shall provide one-for-one replacement units to the extent required by § 42.375.

49. COMPLAINTS AND APPEALS

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

50. MONITORING

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

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.