

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made as of the 21st day of June, 2022, in the Territory of the Virgin Islands, by and between the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**, an autonomous instrumentality of the Government of the United States Virgin Islands, having its principal place of business at 3202 Demarara Plaza, Suite 200, St. Thomas, U.S. Virgin Islands 00802 (hereinafter “**VIHFA**” or “**AUTHORITY**”), and **ENCON ENVIRONMENTAL CONCEPTS, INC.**, whose address is 1115 Strand Street, Suite 2E, Christiansted, U.S. Virgin Islands 00820 (hereinafter the “**Contractor**”).

WITNESSETH

WHEREAS, the VIHFA is in need of a contractor to provide removal of asbestos abatement services; and

WHEREAS, the VIHFA solicited quotes from contractors to provide removal of asbestos abatement services from 670 sq/ft of mastic and 1,648 of ceramic at 146-108 Anna’s Retreat in St. Thomas, U.S. Virgin Islands (the “**Work**”); and

WHEREAS, the services are more particularly described in:

- Request for Procurement Form dated May 24, 2022; and
- VIHFA Independent Cost Estimate Form dated May 24, 2022; and
- Scope of Work dated April 26, 2022

which are attached hereto as *Group Exhibit 1*, and incorporated into this Contract by reference; and

WHEREAS, bids were received from three contractors to perform the removal of asbestos abatement services and the Contractor was selected as the lowest responsive bidder for the **Work**; and

WHEREAS, the Contractor’s bid is attached as *Exhibit 2* and is incorporated into this Contract by reference; and

WHEREAS, the VIHFA desires to engage the services of the Contractor to perform the **Scope of Work** (the “**Work**” or “**Project**”); and

WHEREAS, the Contractor represents that it is willing and capable of providing such services; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this Contract, the parties hereto do covenant and agree to abide by the following terms:

1. **WORK TO BE PERFORMED/SCOPE OF WORK:** The Contractor will perform and complete the removal of asbestos abatement services as detailed in *Exhibit 3* ("Scope of Work"). All work shall be performed in accordance with the Occupational Safety and Health Administration's ("OSHA") regulations section 29 CFR 1926.1025, the Environmental Protection Agency's ("EPA") and the U.S. Virgin Islands Department of Planning and Natural Resource's ("DPNR") rules and regulations governing the disturbance, removal, and disposal of lead containing materials and asbestos containing materials. The Contractor shall also prepare all relevant and required documents and notifications to EPA and DPNR prior to commencement of work. The Contractor agrees to furnish all labor, equipment, materials and services necessary to perform and complete the Work. The VIHFA and the Contractor may agree to changes in or additions to the Scope of Work. However, no changes shall be valid unless in writing and signed by both parties.

2. **WORKMANSHIP/WARRANTY:** The Contractor will complete all work in a substantial and workmanlike manner according to standards and practices in the Contractor's trade and the work shall conform to all codes and regulations which apply to the work to be performed. Contractor warrants that the final product of Contractor's work shall be fit for the purposes for which it is intended. Contractor will warrant against defects in materials and labor for a period of one year from the date of completion and upon acceptance by the VIHFA.

3. **COMPENSATION:** The VIHFA, in consideration of the satisfactory performance of the Work described in Exhibit 3 entitled "Scope of Work," agrees to pay the Contractor the sum of **Twenty-One Thousand Seven Hundred Sixty-Six and 00/100 (\$21,766.00) Dollars** in accordance with the provisions set forth therein and below.

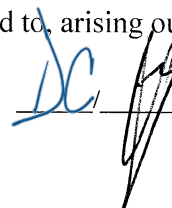
3.1. **TERMS OF PAYMENT:** VIHFA shall pay Contractor after the satisfactory completion and acceptance of the work.

4. **LIEN WAIVERS:** The Contractor agrees to protect, defend and indemnify the VIHFA from any claims for unpaid work, labor or materials with respect to the Contractor's performance under this Contract and shall execute a Lien Waiver upon receipt of each payment.

5. **INSURANCE:** The Contractor shall obtain and maintain liability insurance in an amount no less than One Million Dollars and Zero Cents (\$1,000,000.00) for the duration of the Project; name the VIHFA as the additional insured on its liability insurance; and provide the VIHFA with a copy of Contractor's current liability insurance.

6. **WORKERS' COMPENSATION INSURANCE:** The Contractor shall be required to obtain and have in place Workers' Compensation Insurance coverage and provide the VIHFA with a copy of Contractor's Workers' Compensation Insurance.

7. **HOLD HARMLESS:** The Contractor shall agree to defend, indemnify and hold the VIHFA harmless from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges, and expense (including attorneys' fees) and causes of action of whatsoever character which the VIHFA may incur, sustain, or be subjected to, arising out of or



in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of the VIHFA. The Contractor shall provide the VIHFA a copy of Contractor's insurance binder evidencing coverage for liability and personal injury.

8. **MAINTENANCE OF AREA/REMOVAL OF DEBRIS:** The Contractor agrees to maintain the work area free from major obstructions/hazards to the greatest extent possible and to ensure safe access at all times. The Contractor agrees to remove all debris and surplus material from the property and leave the area in a neat and clean condition.

9. **COMPLETION DATE:** The Contractor agrees that time is of the essence and will commence work no less than seven (7) days after the issuance of the Notice to Proceed, and all work shall be completed no later than fourteen (14) calendar days. VIHFA reserves the right to modify and/or terminate the contract if the Contractor fails to perform in a manner consistent with the terms of the Contract. In addition, VIHFA reserves the right to modify and/or terminate the contract if funding becomes unavailable.

10. **LIQUIDATED DAMAGES:** It is hereby agreed by the parties that if the Contractor fails to complete the scope of work according to the terms of this Contract, the Contractor agrees to pay VIHFA, as liquidated damages and not as a penalty, One Hundred Dollars and Zero Cents (\$100.00) for each calendar day or portion thereof that the Contractor fails to commence or diligently perform the work in accordance with the contract documents and/or is in violation of the Contract. The liquidated damages shall first be deducted from any contract monies due but not yet paid, to the extent available.

11. **MATERIALS:** All materials will be specified in the Scope of Work and shall be new and of good quality.

12. **SUPERVISION OF WORKERS:** The Contractor's authorized representatives shall supervise all workers performing the work. All workers must be competent and skilled in their work.

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

14. **USE OF SUBCONTRACTORS:** The Contractor shall be responsible for all deliverables specified in *Exhibits 1 & 2*. This general requirement notwithstanding, Contractor may enter into subcontractor arrangements. However, Contractor agrees that it has total responsibility for the entire Contract. The documentation required of the Contractor is also required for any subcontractor. The Contractor shall be the single point of contact for all subcontract work. Every subcontract shall incorporate and follow the terms of the contract between the Contractor and VIHFA. The Contractor shall not contract with any other party for any of the services herein contracted without the express written approval of the VIHFA. The Contractor shall be



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responsible for fulfillment of all terms of contract, timing, and payments to subcontractors regardless of funding provided by the VIHFA.

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

16. **LICENSURE:** The Contractor covenants that:

(a) It is duly organized and existing and authorized, qualified and licensed to do business in the United States Virgin Islands.

(b) It will, during the term of this Contract, remain in good standing and qualified to do business under the laws of the Territory, including maintenance at all times of a valid V.I. business license, and will not cease doing business, dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it without the prior written consent of the VIHFA.

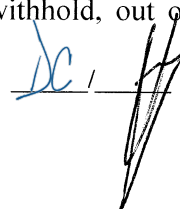
(c) It has the power to execute, deliver and perform, and to enter into the transactions contemplated by this Contract, and has duly authorized the execution, delivery and performance of this Contract.

(d) The execution and delivery of this Contract, the consummation of the transaction contemplated hereby and the fulfillment or compliance with the terms and conditions of this Contract do not and will not conflict with or result in a breach of any of the terms, conditions or provisions of any legal restrictions or any Contract or instrument to which Contractor is now a party or by which it is bound or constitute a default under any of the foregoing.

17. **ASSIGNMENT:** The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the VIHFA.

18. **WAIVERS AND AMENDMENTS:** No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity, the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, condition or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

19. **RIGHT TO WITHHOLD:** If work under this Contract is not performed in accordance with the terms hereof, the VIHFA will have the right to withhold, out of any



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payment due to Contractor, such sums as the VIHFA may deem ample to protect it against loss or to assure payment of claims arising there from, and at its option, the VIHFA may apply such sums in such manner as the VIHFA may deem proper to secure itself or to satisfy such claims. The VIHFA will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

20. **TERMINATION:** Either party will have the right to terminate this Contract with or without cause on ten (10) days written notice to the other party specifying the date of termination.

20(a) **TERMINATION FOR CAUSE:** Except as hereafter provided, the VIHFA shall have the immediate and automatic right to terminate this Contract upon the occurrence by Contractor of a material breach of any term, condition, representation, warranty or covenant of this Contract or the Proposal. A material breach shall include, but not be limited to, the following, if applicable: (1) submission to the VIHFA of reports which are incorrect or incomplete in any material respect; (2) debarment, or the threat thereof, by any federal or local government agency or department; (3) failure to pay creditors and subcontractors which may cause the placement of liens on the VIHFA's property; (4) failure to maintain any bonds and insurance if required under this Agreement; (5) offering of bribes, threatening or abuse of program participants or failure to comply with applicable federal or local requirements; (6) abandonment of the Project by Contractor for a period of seven (7) days; (7) failure to diligently obtain permits and approvals and commence construction of the Project; (8) if the Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of creditors, or if a trustee or receiver is appointed on account of its insolvency; (9) if the Contractor persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials; (10) failure to correct work which is not in accordance with the final construction drawings and specifications; or (11) persistent disregard of the laws, rules, regulations or orders of any public authority having jurisdiction; (12) failure to utilize industry standards in a method or installation; (13) failure to comply with the approved Scope of Work by adding items without approval or by failing to provide materials and/or workmanship in accordance with the Plan; (14) failure to obtain written approval of the Lender and the VIHFA before starting excavations on the Project; (15) failure to adhere to standards and practices of phases within the Project.

20(b) **PARTIAL TERMINATION:** The performance of work under this Contract may be terminated by the VIHFA in part, whenever the VIHFA shall deem such termination advisable. This partial termination shall be affected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties of this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the ten (10) day notice.

21. **NON-DISCRIMINATION:** No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, religion, sexual orientation, or national origin.



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

VIHFA: Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200,
St. Thomas U.S. Virgin Islands 00802
Attention: Dayna Clendinen, Interim Executive Director

Contractor: **Encon Environmental Concepts, Inc.**
1115 Strand Street Suite 2E
Christiansted, U.S. Virgin Islands 00820
Attention: John Verstraaten, President


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

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

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

25. **COUNTERPARTS:** This Contract may be executed in counterparts, each of which will be deemed an original.

26. **ENTIRE CONTRACT:** This Contract constitutes the entire Contract between the parties hereto, and all prior understandings or communications, written or oral, with respect to the work to be done under this contract, are merged herein.



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IN WITNESS WHEREOF, both parties have caused this Contract to be executed by their duly authorized representatives on the date first above written.

WITNESSES:

Celente Thomas

6/13/2022

Encon Environmental Concepts, Inc.

[Signature]

John Verstraaten, President

6/13/2022

WITNESSES:

Damali Roy
[Signature]

Virgin Islands Housing Finance Authority

[Signature]

Dayna Clendinen, Interim Executive Director

Approved For Legal Sufficiency:

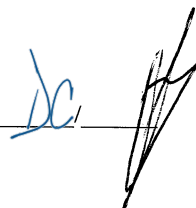
Nyeole Thompson
Nyeole A. Thompson, Esq.
Legal Counsel

Dated: June 9, 2022

DC *[Signature]*

Group Exhibit 1

- Request for Procurement Form dated May 24, 2022; and
- VIHFA Independent Cost Estimate Form dated May 24, 2022; and
- Scope of Work dated April 26, 2022

A handwritten signature in blue ink, consisting of the letters 'DC' followed by a stylized, scribbled signature.

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Exhibit 2

Contractor's Bid Package



Exhibit 3

Scope of Work

The scope items are:

1. Removal of 1,648 sq. ft. of ceramic floor tiles.
2. Abatement of 670 sq. ft. of floor area of asbestos mastic material

The scope of work includes but is not limited to:

1. Sealing and placing the areas under negative pressure to contain and eliminate the spread of airborne contaminants.
2. Removing all ceramic floor tiles and associated adhesive materials as identified in VIHFA tier II Site Specific Environmental Assessment Application Case # VI-HRR-00755 report dated 5/31/2019.
3. Remove identified ACM from the original floor area of residence.
4. Package, consolidate, contain and transport all refuse to an EPA licensed hazardous waste facility treatment on the U.S. mainland for further processing and treatment.
5. Provide hazwaste manifest upon project completion.

A handwritten signature in blue ink, consisting of the letters 'DC' followed by a stylized, cursive flourish.