

THE BOVONI BUSINESS CENTER LEASE

THIS LEASE (the "Lease") is made and entered into as of **October 1, 2022** (the "Commencement Date"), by and between The Bovoni Business Center, LLC ("Landlord") and VIHFA Virgin Islands Housing Finance Authority ("Tenant").

WHEREAS, at the Commencement Date, Landlord owns the following real property (collectively, the "Premises"):

- (a) RAW LAND consisting of 12,000 square feet, more or less, located on Parcel No. 2-2-4 Estate Bovoni, St. Thomas, Virgin Islands,
- (b) all rights, title, and interest of Landlord, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line of such street or highway:

WHEREAS Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord.

WHEREAS the parties desire to enter into this Lease to set forth their rights and obligations to each other relating to the Premises; and

NOW, THEREFORE, for good and valuable consideration, Landlord leases and demises the Premises to Tenant, and Tenant takes and hires the Premises from Landlord, subject only to Permitted Exceptions, for the Term, upon the terms and conditions of this Lease.

1. DEFINITIONS

The following definitions apply in this Lease.

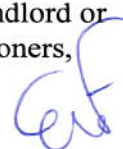
"Additional Rent" means all sums that this Lease requires Tenant to pay Landlord or a third party, whether or not expressly called Additional Rent, except Fixed Rent.

"Application" means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary and appropriate for any Construction this Lease allows, including any application for any building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision plat, or other instrument as Tenant may from time to time reasonably request for such Construction; (b) if and to the extent (if any) the Lease permits, to allow Tenant to change the use or zoning of the Premises; (c) to enable Tenant from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; or (d) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Premises under this Lease.

"Approvals" means any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments or modifications to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any Construction, or for the zoning, rezoning (to the extent this Lease allows), use, occupancy, maintenance, or operation of the Premises.

"Building" means all improvements located or to be located in the Premises from time to time.

"Building Equipment" means all fixtures incorporated in the Premises owned by Landlord or Tenant and used, useful, or necessary to operate the building as such, including air conditioners, ducts, conduits, equipment, machinery, and pipes.



“Business Day” means any weekday on which Virgin Islands banks are open to conduct regular banking business.

“Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

“Default Interest” means interest at an annual rate equal to the lesser of: (a) the Prime Rate plus 1.5 percent per annum; or (b) the usury limit established by Virgin Islands Law.

“Environmental Law” means any Law regarding the following at, in, under, above, or upon the Premises: (a) air, environmental, groundwater, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning Hazardous Substances.

“Fee Estate” means Landlord’s fee estate in the Premises.

“Hazardous Substances” includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyl, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is (i) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended; (iii) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.; (iv) defined as a “pollutant” or “contaminant” under 42 U.S.C.A. § 9601(33); or (v) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

“Hazardous Substances Discharge” means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from real property to the Premises and/or Land, whether or not caused by a party to this Lease or whether occurring before or after the Commencement Date.

“FF&E” means all movable furniture, furnishings, equipment, and personal property of Tenant or anyone claiming through Tenant (excluding Building Equipment) that may be removed without material damage to the Premises and without adversely affecting the structural integrity of the Premises; any electrical, plumbing or other mechanical system in the Premises; or the present or future provision of any utility service to the Premises.

“Indemnify” means, where this Lease states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular matter (the “Indemnified Risk”) that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all

suits, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs from, as a result of, or on account of the Indemnified Risk; or in enforcing the Indemnitor's indemnity. Indemnitor's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Indemnitor's insurance carrier shall be automatically deemed satisfactory.

"Indemnitee" means any party entitled to be indemnified under this Lease, its agents, directors, employees, mortgagees and officers.

"Indemnitor" means a party that agrees to Indemnify any other person.

"Laws" means all laws, rules, regulations, requirements, orders, proclamations and directives of any Government, including the United States Government and the Virgin Islands Government, affecting the Premises, this Lease, or any Construction in any way, including any use maintenance, development, excavation, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises or resulting from Tenant's operations on the Premises, or relating to any real estate taxes, or otherwise relating to this Lease or any party's rights and remedies under this lease or any Transfer of the foregoing enforced whether at or after the Commencement date.

"Leasehold Mortgage" means any mortgage that encumbers the Tenant's leasehold estate or interest in said estate and all of Tenant's rights and privileges under this lease.

"Legal Costs" of a Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs, and expenses, and in or as a result of any bankruptcy proceeding.

"Monetary Default" means Tenant's failure to pay any Rent or other money (including Real Estate Taxes and insurance premiums) when and as this Lease requires.

"Nonmonetary Default" means Tenant's: (a) failure to comply with any affirmative or negative covenant or obligation in this Lease, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

"Notice" means any consent, demand, designation, election, notice, or request relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the "Notices" Section, Section 22, of this Lease.

"Notice of Default" means any Notice claiming or giving Notice of a Default or alleged default.

"Notify" means give a Notice.

"Permitted Exceptions" means only: (1) the recorded title exceptions affecting the Fee Estate as of the Commencement Date; (2) any Application made at Tenant's request; (3) the Lease; (4) any title exceptions caused by Tenant's acts consented to in writing by Landlord.

"Person" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated association, or other entity of any kind.

“Prohibited Lien” means any mechanic’s, vendor’s, laborer’s, or material supplier’s statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant, only if such lien attaches (or may attach upon termination of this Lease) to the Fee Estate.

“Property Insurance” means insurance providing coverage for the Premises, the Building (including structures owned by Tenant), and Building Equipment, against loss, damage, or destruction by fire, windstorm storm, storm surge and other hazards encompassed under the broadest form of property insurance then customarily used for like property in the Virgin Islands from time to time during the Term.

“Rent” means Fixed Rent and Additional Rent.

“Term” means the Initial Term, as extended from time to time by Tenant’s valid exercise of the Month-to-Month Tenancy Option to include one or more month-to-month extensions.

“Transfer” of any property means any of the following whether, by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, of all or any part of such property, or any legal, beneficial, or equitable interest or estate or interest in such property or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale or other transfer of any direct or indirect Equity Interest(s); (c) any transaction that is in substance equivalent to the foregoing.

2. TERM

2.1 *Initial Term.* The initial term of this Lease (the “Initial Term”) shall commence on October 1, 2022 and continue until September 30, 2023.

2.2 *Renewal option.* Provided Tenant shall not be in default of any provision of this Lease, Tenant may, at its option, renew this Lease for three (3) periods of One (1) year each. Tenant shall provide landlord written notice to exercise its option to renew no later than 60-days before the lease end date.

2.3 *Termination Option.* Landlord agrees to allow this Lease Agreement to be terminated by Tenant if at any time during the term of this Lease Agreement one of the following should occur: 1. Tenant loses the contract currently held with VIHFA; or 2. If VIHFA reduces or terminates funding for the Lease under the VIHFA contract, (“Termination Option”). The Termination Option is without penalty; however, Tenant is required to provide the Landlord a 30-day notice to elect the Termination Option.

2.4 *Assignment of Lease:* Provided Tenant shall not be in default of any provision of this Lease, Landlord agrees to allow this Lease Agreement to be assigned, without Landlord’s consent, to the US Virgin Islands Housing Finance Authority (VIHFA) if at any time during the term of this Lease Agreement the Tenant loses the contract currently held with VIHFA.

3. RENT



3.1 *Payments; Proration; Etc.* Tenant shall pay Fixed Rent in equal monthly installments of Two Thousand Five Hundred Dollars (\$2,500.00) in advance on the 1st day of each month. Payment of Fixed Rent shall commence on the Commencement Date. Tenant shall pay all rents payable to:

THE BOVONI BUSINESS CENTER LLC
P.O. BOX 12139
ST THOMAS VI 00801

by mailing a good and sufficient check OR to such payee and address as designated in writing by Landlord.

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

3.2 *No Offsets.* Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

3.3 *Additional Rent.* In addition to Fixed Rent, Tenant shall pay Landlord (or the appropriate third party, as applicable), as additional rent under this Lease, all Additional Rent. Except where this Lease provides otherwise, Tenant shall pay all Additional Rent within N/A days after receipt of an invoice and reasonable backup documentation.

3.4 *Utilities.* Tenant shall arrange and pay directly to Utility Provided costs for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, internet, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term, to include any extended terms.

4. ADVANCE PAYMENT OF RENT

At the Commencement Date, Tenant agrees to pay a total of Seven Thousand Five Hundred Dollars (\$7,500). This total amount includes First Month's Rent and Last Two Month's Rent.

6. USE

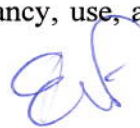
6.1 *Permitted Use.* The Premises may be used by Tenant for the sole purpose of

STORAGE OF SUPPLIES AND CONSTRUCTION MATERIALS
OFFICE SPACE FOR VIHFA STAFF

Tenant may discontinue use of the Premises at any time or from time to time.

6.2 *Exclusive Control.* Tenant shall have exclusive control, possession, occupancy, use, and management of the Premises, subject only to Permitted Exceptions.

7. COMPLIANCE



7.1 *Generally.* To the extent that Tenant's failure to do so will or may subject Landlord to any civil or criminal liability; violate any express written order or notice of violation issued by any Government; cause an imminent risk to health or safety; result in any lien, charge, or other liability affecting Landlord or the Fee Estate, Tenant shall during the Term, at Tenant's expense, in all material respects, subject to Tenant's right of Contest; (a) comply with all Laws and Permitted Exceptions; and (b) procure and comply with all Approvals required by Law.

6.2 *Copies of Notices.* Landlord shall promptly give Tenant a copy of any notice of any kind regarding the Premises, and any notice of nonrenewal or threatened renewal of any Approval that Landlord receives from any Government, utility company, insurance carrier, or insurance rating bureau concerning the Premises.

8. MAINTENANCE AND CONSTRUCTION

8.1 *Obligation to Maintain.* Except to the extent that (a) this Lease otherwise expressly provides or allows or (b) Tenant is performing Construction in compliance with this Lease, Tenant shall during the term, keep and maintain the Premises in good order, condition, and repair, subject to Loss (governed by other provisions of this Lease), reasonable wear and tear, and any other condition that this Lease does not require Tenant to repair. Tenant's obligation to maintain the Premises includes an obligation to make all repairs that the Premises (including plumbing, air conditioning, ventilating, electrical, lighting, fixtures, walls, ceilings, floors, windows, doors, plate glass, landscaping, driveways, site improvements, curb cuts, parking lots, fences and signs located in, on or at the Premises, together with any sidewalks and streets adjacent to the Premises) may require by Law from time to time during the Term, whether structural or nonstructural, foreseen or unforeseen, capital or operating. Tenant shall remove trash, brush and debris from the Premises and the adjoining sidewalk and maintain them in a reasonably clean condition.

8.2 *Construction.* At Tenant's sole cost and expense, Tenant may but need not perform any Construction, as Tenant shall consider necessary or appropriate, provided before Tenant starts any construction, Tenant shall: (a) obtain Landlord's consent, not to be unreasonably withheld (based solely on whether the proposed construction results in a permanent or immovable structure(s) or whether the construction would materially diminish the value of the Fee Estate; (b) give Landlord copies of all necessary Approvals; and (c) give Landlord such assurances that the structure will be removed or Transferred to Landlord at the end of the Term. Tenant shall pay for all Construction when and as required by the parties that perform such Construction.

8.3 *Plans and Specifications.* To the extent the Tenant obtains plans and specifications or surveys (including working plans and specifications and "as-built" plans and specifications and surveys) for any Construction, Tenant shall promptly upon Landlord's request give Landlord a copy, subject to the terms of any agreement between Tenant and the applicable architect, engineer or surveyor. Tenant shall exercise reasonable efforts to cause its agreements with such professionals to permit these deliveries.

8.4 *Excavations.* If an excavation shall be made (or authorized) upon land adjacent to the Premises, then Tenant shall: afford to the Person causing or authorized to cause such excavation a license to enter the Premises, in accordance with Tenant's reasonable instructions, to perform such work as such Person shall reasonably deem necessary or desirable, and as Tenant shall reasonably approve, provided that such Person agrees to preserve and protect the Premises from injury or damage and to support the Premises by proper foundations; or perform or cause to be performed, without cost or

expense to Landlord, work as described in clause "a" to the extent reasonably necessary under the circumstances.

8.5 *Applications.* Upon Tenant's request, Landlord shall, without cost to the Landlord, promptly join in and execute any Application as Tenant reasonably requests, provided that: (a) such Application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with Law) upon Landlord; (b) no uncured Event of Default exists; and (c) Tenant reimburses Landlord's Legal Costs as Additional Rent.

7.6 *Landlord Non-opposition.* Unless an uncured Event of Default exists, Landlord shall not appear in opposition to any Application brought, sought, or defended by Tenant before any Government agency arising out of any Application consistent with this Lease.

9. PROHIBITED LIENS

9.1 *Tenant's Covenant.* If a Prohibited Lien is filed then Tenant shall, within 30 days after receiving Notice from Landlord of such filing (but in any case, within 15 days after Landlord Notifies Tenant of Commencement of foreclosure proceedings), commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant.

9.2 *Protection of Landlord.* NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. TENANT SHALL INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT, AND AGAINST ALL PROHIBITED LIENS.

10. HAZARDOUS SUBSTANCES

10.1 *Restrictions.* Tenant shall not cause or permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless both are: (i) reasonably necessary and customary to conduct any legal business as provided in this Lease in the Premises in accordance with customary standards in such business, or to operate and maintain the Premises for uses this Lease permits and (ii) in compliance with all Environmental Laws.

10.2 *Compliance; Clean-Up.* Tenant shall, at Tenant's expense: (a) comply with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance

Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substance Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify Landlord against any Hazardous Substances Discharge or violation of Environmental Law. Any party's obligations under this paragraph shall not limit such party's rights

against third parties. Tenant shall not allow anyone else to make any use of the Premises in a way that would be in violation of Environmental Law, or which may violate any Coastal Zone Management permit or other permit obtained by Landlord. Tenant shall promptly give Landlord written notice of any investigation, notice of violation, order, claim, demand, administrative action, lawsuit or any action by any Government or private party involving the Premises and any Hazardous Substances Discharge or violation of Environmental Law. If Tenant learns or is notified by any Government that they have violated any Laws, or that any removal concerning any Hazardous Substance or Hazardous Substance Discharge affecting the Premises is necessary, Tenant shall promptly take all necessary actions in accordance with Law and shall keep Landlord fully advised of its efforts.

11. GOVERNMENTAL REGULATIONS

Tenant shall comply with all of the requirements of all Territorial, Federal and other applicable governmental authorities, and shall faithfully observe all Laws concerning its operations on the Premises.

12. INDEMNIFICATION; LIABILITY OF LANDLORD

12.1 *Obligations.* Tenant shall Indemnify Landlord against any: (a) wrongful act, wrongful omission, or negligence of Tenant (and anyone claiming by or through Tenant) or its or their partners, members, directors, officers, or employees); (b) breach or default by Tenant under this Lease; or (c) breach of any representation or warranty Tenant makes in this Lease. Tenant shall further indemnify and hold harmless Landlord against the following during the Term and so long as Tenant remains in possession after the Expiration Date: (a) any Contest Tenant initiates; (b) an Application made at Tenant's request; (c) use, occupancy, control, management, operation, and possession of the Premises; (d) any Construction and any agreements that Tenant (or anyone claiming through Tenant) makes for any Construction; (e) the condition of the Premises or any street, curb or sidewalk adjoining the Premises; and (f) any accident, injury or damage whatsoever caused to any person in or on the Premises or upon or under the sidewalks adjoining the Premises. Notwithstanding anything to the contrary in this Lease, no Indemnitor shall be required to Indemnify any Indemnitee regarding the Indemnitee's intentional acts or omissions or negligence. This paragraph does not apply to Environmental Law and Hazardous Substance Discharges, which are covered elsewhere in this Lease.

12.2 *Liability of Landlord.* During the Term: (a) Tenant is and shall be in exclusive control and possession of the Premises; and (b) Landlord shall not be liable for any injury

or damage to any property (of Tenant or other Person) or to any person occurring on or about the Premises, except to the extent caused by Landlord's intentional act, omission, or negligence. Landlord's right to enter and inspect the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and (to the extent this Lease allows) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties.

12.3 *Prompt Notice.* Indemnitee shall promptly notify Indemnitor of any claim. To the extent, and only to the extent, that Indemnitee fails to give prompt Notice and such failure materially prejudices Indemnitor, Indemnitor shall be relieved of its indemnity obligations for such claim.

11.4 *Selection of Counsel.* Indemnitor shall select counsel reasonably acceptable to Indemnitee. Counsel to Indemnitor's insurance carrier shall be deemed satisfactory.

11.5 *Settlement.* Indemnitor may, with Indemnitee's consent, not to be unreasonable withheld, settle the claim, unless the Indemnitor procures a release of Indemnitee by which Indemnitee need not make any payment to the claimant.

12. RIGHT OF CONTEST

Notwithstanding anything to the contrary in this Lease, Tenant shall have the exclusive right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Prohibited Lien; the terms and conditions of or any requirements for any Approval; or the merits of any claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a "Contest").

13. INSURANCE

13.1 *Tenant to Insure.* Tenant shall, at its sole expense, during the Term, maintain the following insurance: (a) Commercial General Liability Insurance in amounts of Five Hundred Thousand and no/100 Dollars (\$500,000.00) per occurrence and One Million and no/100 Dollars (\$1,000,000.00) aggregate.

13.2 *Nature of Insurance Program:* All insurance policies this Lease requires shall be issued by carriers that are lawfully doing business in the Virgin Islands. Tenant may provide any insurance by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain, provided (i) such policy or certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Lease.

13.3 *Policy Requirements and Endorsements.* All insurance policies this Lease requires shall contain (by endorsements or otherwise) the following provisions:



13.3.1 *Insureds*. Liability Insurance policies shall name Landlord as an “additional insured” and all mortgagees this Lease allows as “additional insureds.”

13.3.2 *Primary Coverage*. All policies shall be written as primary policies not contributing to or in excess of any coverage Landlord may carry.

13.3.3 *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage, for Tenant’s indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Tenant’s failure to obtain such contractual liability coverage shall not relieve Tenant from any indemnity obligation under this Lease.

13.4 *Deliveries to Landlord*. On the Commencement Date, and no later than 10 days before any Liability Insurance or Property Insurance expires or is cancelled, Tenant shall deliver to Landlord certificates of insurance evidencing Tenant’s maintenance of all Liability Insurance and Property Insurance this Lease requires, in each case providing coverage for the term of this Lease and any extension thereof. In the event of any dispute regarding Tenant’s compliance with the insurance requirements of this Lease, Tenant may at Tenant’s option obtain a certificate from a reputable insurance broker confirming such compliance. Such certificate shall be dispositive.

13.5 *Waiver of Certain Claims*. To the extent that Tenant purchases any policy of Property Insurance, Tenant shall attempt to cause the insurance carrier to agree to a Waiver of Subrogation, if not already in the policy. If the Waiver of Subrogation cannot be obtained or can only be obtained at an additional premium, Tenant shall so Notify the Landlord. Landlord shall have ten (10) Business Days from said Notice either (a) to direct the Tenant to place the insurance with an insurance company reasonably satisfactory to Landlord and willing to place the insurance with a Waiver of Subrogation at no greater or additional cost; (b) agree to pay the additional premium if such policy can be obtained only at an additional cost. To the extent, Tenant actually obtains insurance with a Waiver of Subrogation, Landlord releases Tenant and its respective authorized representatives from any claims for damage to any person or the Premises that are caused by or result from risks insured under such insurance policies.

15. LOSSES AND LOSS PROCEEDS

15.1 *Notice*. If either party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such party shall promptly Notify the other.

15.2 *Effect of Casualty*. If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Tenant shall alter, clear, rebuild, reconstruct, repair, replace, restore, safeguard substantially consistent with the conditions before Loss, with reasonable promptness regardless of cost. If the Casualty is substantial, then Tenant may, by Notice to Landlord, given within ten (10) days after Tenant becomes of aware of the Casualty, terminate this Lease effective ten (10) after such Notice, provided Tenant assigns to Landlord all Property Insurance Proceeds (and rights thereto) arising from the Casualty.

16. REPRESENTATIONS AND WARRANTIES



16.1 *Landlord.* Landlord represents and warrants that it has full, right, title, authority, and capacity to execute and perform this Lease; the execution and delivery of documents related to this Lease have been duly authorized by all requisite actions of Landlord and they constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the documents or the consummation of the transactions they contemplate violates any agreement, contract, or other restriction to which Landlord is a party or is bound. Landlord represents and warrants that there is no existing or, to Landlord's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Landlord, any constituent entity or individual of Landlord, or the Premises that would, if adversely determined, materially adversely affect Landlord, the Premises, this Lease, the Leasehold Estate, or Tenant's ability to develop, occupy or operate on the Premises.

16.2 *Tenant.* Tenant makes to Landlord representations and warranties reciprocal to those in the preceding paragraph 16.1.

16.3 *No Liability.* Landlord shall not be responsible to Tenant, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of Law governing or matter giving rise to a claim for damages against Landlord concerning or related to the Premises, other than a breach of any warranty made in this Section.

17. LANDLORD'S TRANSFERS

Landlord (or the holder of any Equity Interest in Landlord) may Transfer the Fee Estate (or such Equity Interest) from time to time if the resulting ownership does not violate this Lease. Upon the Transfer of the entire Fee Estate in compliance with this Lease, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by Landlord after the Transfer, provided that: Landlord delivers and turns over to grantee all funds provided as a Security Deposit and such successor acknowledges receipt of such funds and assumes Landlord's past, present and future obligations under this Lease, subject to the Nonrecourse clause. This Lease shall bind the Landlord only when the Landlord owns the Fee Estate, except as to any liabilities accrued before the date of Transfer of the Fee Estate or arising from failure to turn over the Security Deposit.

18. QUIET ENJOYMENT; TITLE TO CERTAIN PREMISES

Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

19. EVENTS OF DEFAULT; REMEDIES

19.1 *Definition of "Event of Default."* An "Event of Default" means the occurrence of any one or more of the following:



- *Monetary Default.* If a Monetary Default occurs and continues for ten (10) days after Notice from Landlord, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

- *Prohibited Liens.* If Tenant fails to comply with any obligation regarding Prohibited Liens and does not remedy such failure within thirty (30) days after Notice from Landlord.

- *Bankruptcy or Insolvency.* If Tenant or Guarantor ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary bankruptcy proceeding dismissed within 180 days of commencement), or a custodian or trustee is

appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's or Guarantor's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within 180 days).

18.2 *Nonmonetary Default.* If any other Nonmonetary Default occurs and Tenant does not cure it within sixty (60) days after Notice from Landlord describing it in reasonable detail, or in the cases of a Nonmonetary Default that cannot with due diligence be cured within sixty (60) days from such Notice, if Tenant shall not (a) within sixty (60) days from Landlord's Notice advise Landlord of Tenant's intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances (not necessarily limited to 60 days).

18.3 *Remedies.* If an event of Default occurs, then Landlord shall, at Landlord's option, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under other terms of this Lease. Landlord's remedies include:

18.4 *Termination of Tenant's Rights.* Landlord may terminate Tenant's right to possess the Premises by any lawful means, in which case this Lease and the Term shall terminate, such date of termination shall be the Expiration Date, and Tenant shall immediately surrender possession to Landlord.

18.4.1 *Taking Possession.* Landlord may re-enter and take possession of the Premises with process of law, in accordance with Chapter 28, Title 31 of the Virgin Islands Code.

18.4.2 *Suits Before Expiration Date.* Landlord may sue for damages to recover Rent from time to time at Landlord's election.

18.4.3 *Receipt of Money.* No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue or extend this Lease or affect any notice theretofore given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, Landlord may demand, receive, and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment.



19.2.5. *No Waiver.* No failure by Landlord to insist upon strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no Default, shall be modified except by a written instrument executed by Landlord. No waiver of any Default shall modify this Lease. Each and every covenant, agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

19.2.5. *Conditional Limitation.* Landlord may serve upon Tenant a written thirty (30) day notice of cancellation and termination of this Lease. Upon the expiration of such 30-day period, this Lease and the Term shall automatically and without any action by anyone terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such 30-day period were the Expiration Date. Tenant shall then quit and surrender the Premises to Landlord but remain liable as this Lease provides. This paragraph is intended to establish a conditional limitation and not a condition subsequent. Nothing in this paragraph shall limit Landlord's right to commence and prosecute summary disposition proceedings under Virgin Islands Law.

19.2.6. *Damages.* Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Such damages shall include, at Landlord's election, the Rent payable to Landlord provided for in this Lease, when and as due and payable under this Lease less (in the case of this clause "b" only) Landlord's actual proceeds of reletting less Landlord's actual reasonable costs of reletting. Landlord may recover such damages at any time after Tenant's default, including after expiration of the Term.

19.2.7. *Injunction of Breaches.* Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default.

19.2.8. *Continue Lease.* Landlord may at Landlord's option maintain Tenant's right to possession. In that case, this Lease shall continue, and Landlord may continue to enforce it, including the right to collect Rent when due and any remedies for nonpayment.

19.3. *Tenant's Late Payments; Late Charges.* If Tenant fails to make any payment to Landlord required under this Lease within three (3) days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within ten (10) days after demand Default Interest on such late payment, beginning on the date such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord, as Additional Rent, an administrative charge equal to Ten Percent (10%) of any payment that Tenant fails to Pay within 10 days after such payment is first due and payable. This amount is intended to compensate Landlord for any inconvenience and staff time incurred and shall not be credited against any other obligations of Tenant under this Lease. A Fifty dollar and 00/100 (\$50.00) charge shall be made for any bounced or

uncollectible check. This shall be in addition to any interest charges and administrative charges applicable. If two (2) or more checks from Tenant are returned for any reason as uncollectible, then Tenant, thereafter, shall make all future payments by bank check, certified check, or cash.

19.4. *Landlord's Right to Cure.* If Tenant at any time fails to make any payment or take any action this Lease requires, or to repair, maintain, and/or service the Premises, or any part or contents thereof at any time or times, then after Five (5) Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Tenant shall reimburse Landlord, as Additional Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this paragraph; and (b) Default Interest on "a".

19.5 *Waivers.* Landlord and Tenant irrevocably waive all rights to trial by jury in any action, proceeding, counterclaim, or other litigation arising out of or relating to this Lease, the relationship of Landlord and Tenant regarding the Premises, enforcement of this Lease, Tenant's use or occupancy of the Premises, any claim of injury or damage arising between Landlord and Tenant, or any action of Landlord in connection with or relating to the enforcement of this Lease. Tenant waives any right of redemption provided by Law. Tenant waives any right to interpose any counterclaim in any action by Landlord to enforce the Lease or Landlord's right and remedies under this Lease.

19.6 *Accord and Satisfaction, partial payments.* No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment of Rent shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy.

20. END OF TERM

Upon any Expiration Date: (a) all Improvements and Building Equipment shall become Landlord's Property; (b) Tenant shall deliver to Landlord possession of the Premises, in the condition this Lease requires; (c) Tenant shall deliver the Premises free and clear of all: liens except Permitted Exceptions and liens that Landlord or any of its agents caused; (d) Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Premises. Notwithstanding anything to the contrary in this paragraph, Tenant may remove from the Premises any FF&E and any Building Equipment that Landlord elects by written Notice not to accept, but Tenant must do so, if at all, before or within ten (10) days after the Expiration Date and shall repair any damage caused by such removal. Landlord shall have no responsibility to preserve or protect such FF&E or Building Equipment. Tenant's FF&E and Building Equipment not removed within 10 days shall be deemed abandoned. Landlord shall have the right to remove such abandoned Tenant's FF&E and Building Equipment and place them in storage, and Tenant shall be responsible to pay all costs for removal and storage.

21. NOTICES.



All Notices shall be in writing and addressed to Landlord and Tenant as set forth in this section. Notices are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing Notice in compliance with this Lease. Notwithstanding the foregoing, Notices for the regular payment of Rent under this Lease (as opposed to late payments, for example) may be sent by first class mail, in which case they shall be deemed delivered three (3) Business Days after deposit in the U.S. Mail. An Attorney may give any Notice on behalf of its client.

If to Tenant, to:

**VIHFA
Virgin Islands Housing Finance Authority
3202 Demarara Plaza Suite 200
St. Thomas, Virgin Islands 00802**

If to Landlord, to:

**The Bovoni Business Center, LLC
P.O. Box 12139
St Thomas, VI 00801**

22. NONRECOURSE

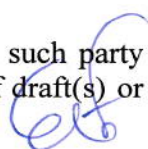
Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord and Tenant and each of their parent(s), subsidiary(ies), or affiliated corporations or other entities, and any of their constituent partners, joint venturers, or tenants-in-common, for damages or otherwise, shall be enforceable against, and shall not extend beyond, their interests in the Premises (including the proceeds thereof). No property or assets whatsoever, except Landlord's or Tenant's (as applicable) interest in the Premises (including the proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of remedies (monetary or otherwise) of the other party arising under or in connection with this Lease. The limitation of liability and limitation of remedy in this paragraph shall not apply in any way to, and shall not be construed to limit or preclude, personal liability (if any) arising under the Guaranty.

23. INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

23.1 *Captions.* The captions of this Lease are for convenience and reference only. They in no way affect the lease.

23.2 *Counterparts.* This lease may be executed in counterparts.

23.3 *Delivery of Drafts.* No party shall be bound by this Lease unless and until such party shall have executed and delivered at least one counterpart of this Lease. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way.



23.4 *Entire Agreement.* This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

23.5 *Governing Law.* This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the law of the Virgin Islands, without regard to the principles of conflict of laws. Venue for any litigation arising out of this Lease shall be in Superior Court located in St. Thomas, Virgin Islands

23.6 *Partial Invalidity.* If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provision of the Lease shall be valid and be enforced to the fullest extent Law allows.

23.7 *Successors and Assigns.* This Lease and all rights granted herein shall run with the land and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

23.8 *Brokers.* If either party is represented by any broker or any other leasing agent, such party is responsible for all commission fee or other payment to such agent and agrees to indemnify and hold the other party harmless from all claims by such broker or anyone claiming through such broker.

23.9 *Reasonableness.* Wherever this Lease states that a party shall not unreasonably withhold approval: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding; (c) if a party grants its consent (or fails to object) to any matter, this shall not waive its rights to require such consent for any further or similar matter; (d) any dispute for withholding or delay of consent shall be determined by arbitration.

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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, Construction Project Manager and Subcontractors shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this 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

Construction Project Manager and Subcontractors 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

The Authority 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 Construction Project Manager and Subcontractors violate or breach any contract term. If the Construction Project Manager and 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

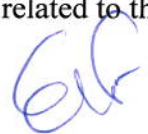
The Construction Project Manager and Subcontractors shall complete and submit all reports, in such form and according to such schedule, as may be required by the Authority. The Construction Project Manager and Subcontractors shall cooperate with all the Authority efforts to comply with HUD requirements 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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

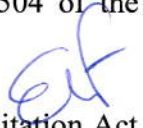
The Construction Project Manager and Subcontractors shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any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

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

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



The Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors shall notify the Authority 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors shall provide the Authority any additional information necessary for the Authority to fully assess and address such actual or potential conflict of interest. The Construction Project Manager and Subcontractors shall accept any reasonable conflict mitigation strategy employed by the Authority, 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

The "Subcontracting" provision is not applicable to subrecipients/subgrantees but not applicable to contractors. Therefore, the "Subcontracting" provision is not applicable to this Contract.

When subcontracting, the Construction Project Manager and Subcontractors shall solicit for and contract with such Construction Project Manager and Subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

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



The Construction Project Manager and Subcontractors represents to the Authority 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 the Authority.

18. INDEMNIFICATION

The Construction Project Manager and Subcontractors shall indemnify, defend, and hold harmless the Authority 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 Construction Project Manager and Subcontractors 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 General Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT


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

The Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the General 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 or when required by Federal program legislation. The Construction Project Manager and Subcontractors 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 General 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

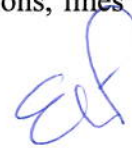
If, through any cause, the Construction Project Manager and Subcontractors shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Construction Project Manager and Subcontractors shall violate any of the covenants, agreements, or stipulations of this contract, the Authority shall thereupon have the right to terminate this contract by giving written notice to the Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors under this contract shall, at the option of the Authority, become the Authority's property and the Construction Project Manager and Subcontractors shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Construction Project Manager and Subcontractors shall not be relieved of liability to the Authority for damages sustained by The Authority by virtue of any breach of the contract by the Construction Project Manager and Subcontractors and the Authority may withhold any payments to the Construction Project Manager and Subcontractors for the purpose of set-off until such time as the exact amount of damages due to the Authority from the Subcontractor is determined.

23. TERMINATION FOR CONVENIENCE

The Authority may terminate this contract at any time by giving at least 30 days' notice in writing to the Construction Project Manager and Subcontractors. If the contract is terminated by the Authority as provided herein, the Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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
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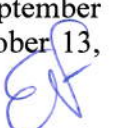
Subcontractor;

- 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 General Contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
- b. The Construction Project Manager and Subcontractors agree 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 Construction Project Manager and Subcontractors' 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Construction Project Manager and Subcontractors must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors will take such action with respect to any subcontractor 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors agrees as follows:



- A. The Construction Project Manager and Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination clause. The Construction Project Manager and Subcontractors shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Construction Project Manager and Subcontractors will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Project Manager and Subcontractors, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Construction Project Manager and Subcontractors will send to each labor union or representative of workers with which it 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 General 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors' 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 Construction Project Manager and Subcontractors 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. Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors. The Construction Project Manager and Subcontractors 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 General 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 Construction Project Manager and Subcontractors may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES

The Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors agree 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.

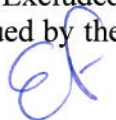
The Construction Project Manager further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; 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 Construction Project Manager and 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 Construction Project Manager and Subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Construction Project Manager and 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.



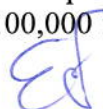
- B. Agreement by the Subcontractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, 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 Construction Project Manager 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 General Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. LOBBYING

The Construction Project Manager and Subcontractors certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Construction Project Manager and Subcontractors, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Construction Project Manager and Subcontractors shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Construction Project Manager 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 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 Construction Project Manager and Subcontractors shall comply with the Authority bonding requirements, unless they have not been approved by HUD, in which case the Construction Project Manager and Subcontractors shall comply with the following minimum bonding requirements:

- (1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) *A performance bond on the part of the Construction Project Manager and Subcontractors for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the General Contractor’s/Subcontractor’s obligations under such contract.
- (3) *A payment bond on the part of the Construction Project Manager and Subcontractors 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.

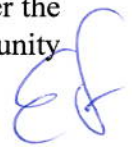
30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (for construction related contracts exceeding \$200,000)

A. The work to be performed under this contract is subject to the requirements of 24 CFR Part 75. This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

(1) *Section 3 projects.* (i) Section 3 projects mean housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

(2) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. part 75, 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 75 regulations.

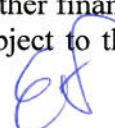
- C. The Construction Project Manager and Subcontractors agree to identify all those individuals that will be working on the project by name, address, job title and wage rate, with the exception of those specifically excluded under paragraph D.. Thereafter, weekly payroll records will be submitted for those working on all sites. Upon adding any new worker to the payroll, the above information must be submitted.
- D. Professional service jobs are defined in 24 CFR 75.5 as “non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.” These jobs are excluded from the reporting requirement for Section 3 and Targeted Section 3 workers because it is very difficult for grantees and contractors to recruit and hire eligible persons for these roles due to the higher wages/salaries earned for these types of jobs. Construction Project Manager and Subcontractors should not include the labor hours worked for professional services jobs in the total labor hours worked on the project (pursuant to 24 CFR 75.25(a)(4)). However, if employees in professional services roles meet the definition of a Section 3 worker or Targeted Section 3 worker, Construction Project Manager and Subcontractors should report their labor hours in the applicable worker hour category. By structuring the requirements in this way, the regulation incentivizes grantees and contractors to hire Section 3 or Targeted Section 3 workers for professional services jobs without creating undue burden if qualified Section 3 workers are not available to fill these roles.
- a. Section 3 workers are defined as workers whose salary/wages are at or below those of a one-person household at 80% of AMI (based on St. John income standards).’
 - b. Targeted Section 3 workers are those workers either employed by a Section 3 business or who live within a one-mile radius of the project location.
- E. Noncompliance with HUD’s regulations in 24 C.F.R. part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

31. FAIR HOUSING ACT

Construction Project Manager and Subcontractors 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.



Construction Project Manager and Subcontractors are required to report the following information for any contract or subcontract exceeding \$30,000:

- Organization DUNS number
- Name and Address of organization
- Parent DUNS number
- System for Award Management (SAM) Cage Code

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

www.USASpending.gov.

33. PROCUREMENT

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

34. CHANGE ORDERS TO CONTRACTS

Change orders are issued when the initial agreed upon pricing or work to be completed requires modification. First, the Construction Project Manager must complete a Change Order Request Form. This form and supporting documentation must be delivered to the VIHFA Project Manager for review. Each change order must have a cost analysis. Change orders can only be invoiced once approved by the Chief Disaster Recovery Officer and/or Executive Director. The amount listed on the invoice must match the previously approved amount and must be cost reasonable. The Construction 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- ELIGIBLEREHABILITATION 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, Construction Project Manager and Subcontractors 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 Construction Project Manager and Subcontractors 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 the Authority'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.cdbgdr.vihfa.gov. Complaints regarding fraud, waste, or abuse of government funds shall be addressed to the HUD Office of Inspector General Fraud Hotline by phone: 1-800-347-3735 or email: hotline@hudoig.gov.

50. MONITORING

As per CDBG regulation, 24 C.F.R. § 570.501(b), grantees of CDBG-DR funds are responsible for carrying out their programs to meet compliance with CDBG Program, statutory and regulatory requirements, including monitoring their project administrators, Construction Project Manager and Subcontractors. As such, throughout the application, planning, design, and implementation phase of the program, the Authority 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 Construction Project Manager and Subcontractors 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.



END OF DOCUMENT

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