

**COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION (CDBG-MIT)
GRANT AGREEMENT**

Grantee's Name: United States Virgin Islands

Tax ID Number: 66-0412508

Grantee's unique entity identifier [UEI]: CJJG NN7K KH58.

Unique Federal Award Identification Number (FAIN): B-18-DP-78-0002

Appropriation Account: 86X0162

Program Accounting Code: M3T

Federal Award Date: April 25, 2023

Period of Performance and Budget Period Start Date: April 25, 2023

Period of Performance and Budget Period End Date: April 25, 2035

Date Use of Funds May Begin: September 5, 2017

Amount of Federal Funds Obligated by this Action: \$774,188,000

Amount of Federal Funds Previously Obligated: N/A

Dates of Prior Obligation (if applicable): N/A

Total Amount of the Federal Award: \$774,188,000

Federal awarding agency: Department of Housing and Urban Development

Contact information for HUD: Tennille S. Parker, Director, Office of Disaster Recovery,
Office of Block Grant Assistance, Community Planning and Development,
U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Room 7282,
Washington, DC 20410

Assistance Listing: 14.228 Community Development Block Grant/State's program

Indirect Cost Rate for the Grant: See Attachment 1

Check One: Original Funding Approval or Amendment: Click or tap here to enter text.

I. General Terms and Conditions

Statutory and Regulatory Requirements, Grantee Submissions

This grant agreement between the Department of Housing and Urban Development (HUD) and the above-named grantee is made pursuant to the authority of Public Law 115-123 (Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018) (February 9, 2018)) (the “Appropriations Act”).

The grantee agrees to use the grant funds, also referred to as Community Development Block Grant Mitigation funds (CDBG-MIT), in accordance with this grant agreement. The requirements of the Appropriations Act and title I of the Housing and Community Development Act of 1974 (HCDA) (42 USC 5301 et seq.) and applicable implementing regulations at 24 CFR part 570, as now in effect and as may be amended from time to time, and as modified by waivers, alternative requirements, and other requirements described in this grant agreement and in Federal Register notices, published as of the date of this grant agreement or in the future, are hereby incorporated into and made a part of this agreement.

The Grantee must comply with the applicable requirements at 2 CFR part 200, as amended, to the extent that part 200 is incorporated into and made applicable by 24 CFR part 570, subpart I or applicable Federal Register notices that govern this grant. Recent amendments to 2 CFR part 200 were effective on August 13, 2020, November 12, 2020, and February 22, 2021. Where any previous or future amendments to 2 CFR part 200 replace or renumber sections of part 200 that are cited specifically in applicable Federal Register notices, the Agreement (as may be amended), or program regulations, activities carried out under the grant after the effective date of the part 200 amendments will be governed by the part 200 requirements as replaced or renumbered by the part 200 amendments.

The grantee’s submissions to HUD to obtain the grant – the grantee’s action plan for mitigation (the “action plan”), implementation plan, capacity assessment, and certifications (including documentation submitted in support of certifications) – as may be modified from time to time as required or permitted by the grant requirements, are also incorporated into and made a part of this agreement.

The requirements of the *Federal Register* notice(s) as of the date of this agreement are included for convenience as Appendix A. However, as mentioned above, these *Federal Register* notice(s) refer to specific regulations of 2 CFR part 200 that have since been renumbered or revised, and where these *Federal Register* notice(s) refer to specific regulations of 2 CFR part 200 that were renumbered or revised, the requirements that apply are the requirements in 2 CFR part 200, as amended. The grant requirements may be amended from time to time by future Federal Register notices. Additional or amended grant requirements published in the *Federal Register* apply even if this grant agreement (including Appendix A) is not updated. The

requirements include but are not limited to the following (with revisions to reflect 2 CFR part 200 citations in effect as of the date of this grant agreement below, identified by citations in brackets):

1. Use of CDBG-MIT

The grantee agrees that use of this grant will be consistent with its action plan and all CDBG-MIT activities will: (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed area(s), as described in the applicable *Federal Register* notice(s), ("MID area"); (3) be CDBG-eligible activities under the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and a Covered Project.

Mitigation Definition. For the purposes of this grant, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

2. Combined technical assistance and administrative expenditures cap.

The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) do not apply to the extent that they cap administration and technical assistance expenditures, limit the grantee's ability to charge a nominal application fee for grant applications for activities the grantee carries out directly, and require a dollar-for-dollar match of grantee funds for administrative costs exceeding \$100,000. HUD waived 42 U.S.C. 5306(d)(5) and (6) and imposed the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant plus 5 percent of program income generated by the grant. Under this alternative requirement, the grantee is limited to spending a maximum of 15 percent of its total grant amount or \$750 million, whichever is less, on planning costs. Planning costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(12).

3. Staffing, key personnel, organizational structure, and internal audit function.

Implementation Plan and Capacity Assessment. HUD evaluated the grantee's capacity to effectively manage the funds through a review of the grantee's implementation plan and capacity assessment. The grantee must implement its CDBG-MIT grant consistent with the implementation plan and capacity assessment as approved by HUD. HUD will monitor the grantee's use of funds to determine the grantee's compliance with the implementation plan, including performance and timeliness objectives therein.

Procedures to detect and prevent fraud waste and abuse. A grantee has adequate procedures to detect and prevent fraud, waste, and abuse if it submits procedures that enhance those previously certified by HUD for the grantee's CDBG-DR grant and if those policies or procedures include: (i) The criteria to be used to evaluate the capacity of potential subrecipients; (ii) The frequency with which the grantee will monitor other agencies of the grantee that will

administer CDBG–MIT funds, how it will enhance its monitoring of subrecipients, contractors and other program participants, how and why monitoring is to be conducted and which items are to be monitored; (iii) Enhancements to the internal auditor function established for the grantee’s CDBG-DR grant, if applicable; or if the CDBG–MIT grant is to be administered by an agency that does not administer a CDBG–DR grant, how the internal auditor function is to be established and resourced. The internal audit function must provide both programmatic and financial oversight of grantee activities and the submission must include a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse.

3. Payment

The grantee's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR part 205. The grantee must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the grantee to units of general local government. Grantees must also have procedures in place, and units of general local government must use these procedures to minimize the time elapsing between the transfer of funds by the grantee and disbursement for CDBG activities. 24 CFR 570.489(c).

4. Registration.

The grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS), the System for Award Management (SAM.gov), and the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and Central Contractor Registration, and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.

5. Subrecipients.

Carrying out activities with subrecipients. Eligible activities may be carried out by the grantee, subject to state law and consistent with the requirement of 24 CFR 570.200(f), through assistance provided under agreements with subrecipients. For a grantee taking advantage of the waiver to carry out activities directly through subrecipients, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

The grantee continues to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g) and (h) relating to conflicts of interest, and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

The grantee may carry out activities in tribal areas. The grantee shall coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG–MIT assistance to beneficiaries in tribal areas. If the grantee carries out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, the grantee must obtain the consent of the Indian tribe with

jurisdiction over the tribal area to allow the grantee to carry out or to fund CDBG-MIT projects in the area. Indian tribes that receive CDBG-MIT funding from the grantee must comply with applicable nondiscrimination requirements (see 24 CFR 1003.601).

Evaluation of the capacity of potential subrecipients. The grantee shall adhere to the criteria for the evaluation of the capacity of potential subrecipients as provided in the documentation submitted in support of its certifications regarding procedures to detect fraud, waste and abuse.

Subrecipient monitoring and management. The provisions of [2 CFR 200.331] through [200.333] apply to the grantee's use of subrecipients. 24 CFR §570.489 (m).

Subrecipient Audit: Subrecipients are subject to 24 CFR 570.502 and therefore are required to comply with the audit requirements in 2 CFR part 200, subpart F. The grantee shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 2 CFR part 200, subpart F, pursuant to 24 CFR §570.489(n).

Responsibility for review and handling of noncompliance. The grantee shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, and as modified by applicable *Federal Register* notices. In the case of noncompliance with these requirements, the grantee shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The grantee shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

Administrative Cap Includes Subrecipient Administrative Costs. Five percent of the grant plus five percent of program income may be used for administrative costs by the grantee, units of general local government, or by subrecipients. Thus, the total of all costs classified as administrative for any CDBG-MIT grantee must be less than or equal to the five percent cap.

Fraud-Related Training for Subrecipients. The grantee shall attend and require subrecipients to attend fraud-related training provided by HUD OIG to assist in the proper management of CDBG-MIT grant funds. Additional information about this training will be posted on the HUD website.

Change of use of real property rule includes subrecipients. The grantee is subject to the waiver and alternative requirement applicable to the change of use of real property rule. All references to "unit of general local government" in 24 CFR 570.489(j) shall be read as "State, unit of general local government (UGLG) or State subrecipient."

Reimbursement for Subrecipient Costs. The provisions of 24 CFR 570.489(b) are applied to permit the grantee to charge to the CDBG-MIT grant eligible pre-award costs incurred by itself, its recipients or subrecipients (including public housing authorities (PHAs)) that are

associated with CDBG-MIT funds and comply with grant requirements. The Department requires the grantee to include all pre-award activities in its action plan.

CDBG-MIT funds shall not be used to reimburse homeowners, businesses or entities (other than grantees, local governments, and subrecipients described above) for mitigation activities completed prior to September 4, 2019.

Procurement.

For all contracts procured by subrecipients for contractors used to provide discrete services or deliverables only: (a) The subrecipient is required to clearly state the period of performance or date of completion in all contracts; (b) The subrecipient must incorporate performance requirements and liquidated damages or, for administrative and consultant contracts, penalties, into each procured contract (contracts that describe work performed by general management consulting services need not adhere to this requirement); and (c) The subrecipient may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management.

Timely Expenditures. To meet the requirement for adequate procedures to determine timely expenditures, the procedures must describe how the grantee will monitor expenditures of its subrecipients.

Flood Insurance. Subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements.

Implementation Plan and Capacity Assessment. The grantee's implementation plan and capacity assessment must describe how it will ensure effective communication and coordination between State and local departments and divisions involved in the design and implementation of mitigation planning and projects, including, but not limited to subrecipients responsible for implementing the grantee's action plan.

Subrecipient Program Income. Under this agreement, the definition of "program income" includes gross income generated from the use of CDBG-MIT funds that are received by a subrecipient, except as provided in the requirements related to Revolving Funds, but does not include the total amount of funds that is less than \$35,000 received by a subrecipient or amounts generated by activities eligible under section 105(a)(15) of the HCDA and carried out by an entity under the authority of section 105(a)(15) of the HCDA (which may include subrecipients).

The grantee may permit a local government or Indian tribe that receives or will receive program income to retain the program income but are not required to do so. If the grantee provides CDBG-MIT funds to a local government and permits local governments to retain program income, or the grantee permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the Disaster Recovery Grant Reporting (DRGR) system. In addition to the regulations addressing program income found at 24

CFR 570.489(e) and 570.504, the grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the grantee's jurisdiction.

Revolving loan funds. Subject to the other requirements on revolving funds that apply to the use of grant funds, the grantee may permit local governments to establish revolving funds to carry out specific, identified mitigation activities, and may also establish a revolving fund to distribute funds to local governments to carry out specific, identified mitigation activities. However, no revolving fund shall be directly funded or capitalized with CDBG–MIT grant funds, pursuant to 24 CFR 570.489(f)(3).

Optional relocation policies of subrecipients. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. This waiver permits the grantee to establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies.

Cost principles applicable to Subrecipients. As required by the regulation at 24 CFR §570.489(p), the grantee must ensure that costs incurred by its subrecipients are in conformance with 2 CFR part 200, subpart E. All cost items described in 2 CFR part 200, subpart E, that require Federal agency approval are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 2 CFR part 200, subpart E, and are otherwise eligible, except for the following:

- (1) Depreciation methods for fixed assets shall not be changed without the express approval of the cognizant Federal agency (2 CFR 200.436).
- (2) Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program (2 CFR 200.441).
- (3) Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).
- (4) Organization costs (2 CFR 200.455).

Underwriting. The grantee and its subrecipients are required to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA. The underwriting guidelines are found at Appendix A of Part 570.

https://www.ecfr.gov/cgi-bin/text-idx?SID=7d3cce71b6a1bbdc3f81715006fbae37&mc=true&node=pt24.3.570&rgn=div5#ap24.3.570.0000_0nbspnbspnbspn.a

Tracking oversight activities in the DRGR system. The grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its mitigation activities. The grantee's Quarterly

Performance Report (QPR) will include a summary indicating the number of grantee oversight visits and reports. Any instances of fraud, waste, or abuse identified should be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov). Grantees must establish internal controls to ensure that no personally identifiable information shall be reported in DRGR.

Certifications. In its application, the grantee certified that any subrecipient carrying out an activity with CDBG-MIT funds, possess(es) the legal authority to carry out the program for which it is seeking funding in accordance with applicable requirements. The grantee also certified in its application submissions that any subrecipient or administering entity currently has or will develop and maintain the capacity to carry out mitigation activities in a timely manner.

7. Cost Verification.

The grantee will apply the cost principles at 2 CFR part 200, subpart E to all CDBG-MIT expenditures, including the requirement that costs be necessary and reasonable for the performance of the CDBG-MIT grant.

The grantee shall implement the CDBG-MIT programs and projects in accordance with the controls described in its action plan, as amended, for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction.

8. Implementation of a Covered Project

HUD established additional requirements specific to the implementation of a Covered Project, as defined in the applicable *Federal Register* notice(s).

Prior to the grantee's execution of a contract for the construction, rehabilitation, or reconstruction of an approved Covered Project the grantee shall have: (a) engaged an independent, third-party entity (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract during implementation to determine the costs of the contract and any changes to the contract are reasonable; (b) secured the certification of a licensed design professional stating that the project design or redesign meets a nationally recognized design and performance standard applicable to the project, including, if applicable, criteria recognized by FEMA for a project of its type, pursuant to FEMA's Hazard Mitigation Assistance Guidance and Hazard Mitigation Assistance Guidance Addendum; and (c) established a plan for financing the operation and maintenance of the project during its useful life.

9. Additional Criteria to Meet a National Objective

The grantee is subject to the following requirements in order to ensure that the use of CDBG-MIT funds is consistent with the mitigation purposes for which funds were provided.

Additional criteria applicable to all mitigation activities funded with CDBG-MIT funds. The provisions of 24 C.F.R. 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for all mitigation activities funded with CDBG-MIT funds. To meet a national objective, all CDBG-MIT funded activities must:

- (i) Demonstrate the ability to operate for the useful life of the project; and each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must have a plan to fund the long-term operation and maintenance for CDBG-MIT projects.
- (ii) Be consistent with other mitigation activities. The CDBG-MIT activity must be consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the CDBG-MIT activity must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID area.

Additional criteria applicable to Covered Projects funded with CDBG-MIT funds. The provisions of 24 C.F.R. 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for Covered Projects funded with CDBG-MIT funds. Pursuant to the applicable *Federal Register* notices to meet a national objective, all Covered Projects must: (i) Demonstrate long-term efficacy and fiscal sustainability; and (ii) Demonstrably benefit the MID area.

Prohibition on use of slum and blight national objective. Unless a grantee has received prior approval from HUD, CDBG-MIT funded activities cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c).

10. Program Income

HUD waived applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), 570.500 and 570.504 only to the extent necessary to provide additional flexibility to the grantee as described below. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

When income is generated by an activity that is only partially assisted with CDBG-MIT funds, the income shall be prorated to reflect the percentage of CDBG-MIT funds used (*e.g.*, a single loan supported by CDBG-MIT funds and other funds; a single parcel of land purchased with CDBG-MIT funds and other funds). Program income includes, but is not limited to, the following:

Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-MIT funds.

Proceeds from the disposition of equipment purchased with CDBG-MIT funds.

Gross income from the use or rental of real or personal property acquired by the grantee, local government, or subrecipient thereof with CDBG-MIT funds, less costs incidental to generation of the income (*i.e.*, net income).

Net income from the use or rental of real property owned by the grantee, local government, or subrecipient thereof, that was constructed or improved with CDBG-MIT funds.

Payments of principal and interest on loans made using CDBG–MIT funds.

Proceeds from the sale of loans made with CDBG–MIT funds.

Proceeds from the sale of obligations secured by loans made with CDBG–MIT funds.

Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the special assessments are used to recover all or part of the CDBG–MIT portion of a public improvement.

Gross income paid to the grantee, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–MIT assistance.

“Program income” does not include the following: The total amount of funds that is less than \$35,000 received in a single year and retained by the grantee, local government, or a subrecipient thereof; Amounts generated by activities eligible under section 105(a)(15) of the HCDA and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

Retention of program income. The grantee may permit a local government or Indian tribe that receives or will receive program income to retain the program income, but are not required to do so.

Program income—use, closeout, and transfer. Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue mitigation activities, is treated as additional CDBG–MIT funds subject to the grant requirements and grant agreement must be used for mitigation activities in accordance with the grantee’s action plan. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in the Revolving Loan Requirements and Repair, operation and maintenance of certain CDBG–MIT projects.

In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: The grantee may transfer program income to its annual CDBG program before closeout of the grant that generated the program income. In addition, the grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the State. Program income received by the grantee after closeout of the grant that generated the program income, may also be transferred to a grantee’s annual CDBG award. In all cases, any program income received that is *not* used to continue the mitigation activity will not be subject to the waivers and alternative requirements that apply to the CDBG-MIT grant. Rather, those funds will be subject to the grantee’s regular CDBG program rules.

Revolving loan funds. The grantee and local governments may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

The grantee may also establish a revolving fund to distribute funds to local governments to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Note that 24 CFR 570.489(f)(3) provides that no revolving loan fund shall be directly funded or capitalized with CDBG–MIT grant funds.

Repair, operation and maintenance of certain CDBG–MIT projects. The grantee may request a waiver from HUD for the use of program income to reimburse its agencies for the repair, operation and maintenance of publicly owned and operated projects funded with CDBG–MIT funds, according to the requirements published in the *Federal Register* notice(s) for the use of program income for this purpose by local government grantees.

Tracking program income in the Disaster Recovery Grant Reporting (DRGR) System. The grantee must use the DRGR system to draw grant funds. The grantee must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If the grantee provides CDBG–MIT funds to a local government and permits local governments to retain program income, or the grantee permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

11. Environmental and Flood Insurance:

Assumption of Responsibilities for Environmental Review. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to section 104(g) of title I and published in 24 CFR part 58.

Flood insurance. The grantee, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements, prior to providing assistance.

12. Amendments

The streamlined citizen participation requirements include substantial amendment criteria. Before the grantee submits any substantial amendment to the action plan, the grantee

will publish the proposed amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the amendment's contents.

The grantee must provide a 30-day public comment period and reasonable method(s) (including electronic submission) for receiving comments on substantial amendments. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: The addition of a CDBG-MIT Covered Project; a change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required for CDBG-MIT funds for the preparation and submission of an action plan, provided, however, that a substantial action plan amendment shall require a 30-day public comment period and is not subject to public hearing requirements in section V.A.3.a. of the applicable Federal Register notice published August 30, 2019. The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days. Nonsubstantial amendments shall be numbered in sequence with other nonsubstantial and substantial amendments and incorporated into the action plan.

The grantee must consider all comments, received orally or in writing, on any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the substantial amendment.

The grantee must make any substantial amendments available to the public on its website and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with limited English proficiency.

13. Procurement

The grantee must comply with the procurement requirements at 24 CFR 570.489(g), which require that when procuring property or services to be paid for in whole or in part with CDBG funds, the grantee shall follow its procurement policies and procedures. The grantee shall establish requirements for procurement policies and procedures for units of general local government and subrecipients, based on full and open competition, consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service (including professional services like legal services or case management).. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the grantee. Cost plus a percentage of cost and percentage of construction costs methods of

contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by §570.489(h).) The grantee shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The grantee shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.331.

The grantee shall evaluate or require an evaluation of the cost or price of the product or service.

HUD may request periodic updates from the grantee if it uses contractors. A contractor is a third-party person or organization from which the grantee acquires good or services through a procurement process, consistent with the procurement requirements in the CDBG program regulations. HUD established an additional alternative requirement for *all* contracts with contractors used to provide discrete services or deliverables only, as follows:

The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;

The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to this requirement; and

The grantee (or procuring entity) may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management. Technical assistance resources for procurement are available to grantees either through HUD staff or through technical assistance providers engaged by HUD or the grantee.

14. Public Website

HUD is requiring the grantee to maintain a public website that provides information accounting for how all CDBG-MIT grant funds are used, managed and administered, including links to all action plans, action plan amendments, performance reports, CDBG-MIT citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, the grantee will make the following items available on its website: The action plan (including all amendments); each Quarterly Performance Report (QPR) (as created using the DRGR system); procurement policies and procedures; all executed contracts that will be paid with CDBG-MIT funds; and the status of services or goods currently being procured (e.g., phase of the procurement, requirements for proposals, etc.).

15. Audits

Audits of the grantee and units of general local government shall be conducted in accordance with 2 CFR part 200, subpart F, which implements the Single Audit Act. The grantee shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 2 CFR part 200, subpart F. 24 CFR §570.489(n).

16. Reporting

Performance review. HUD waived the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and 24 CFR 1003.506. Alternatively, HUD is requiring that grantees enter information in DRGR in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the QPR and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at: <https://www.hudexchange.info/programs/drgr/>.

The grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full calendar year quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG-MIT funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-MIT funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For all housing and economic development activities, the address of each CDBG-MIT assisted property must be recorded in the QPR. The grantee must not include such addresses in its public QPR; when entering addresses in the QPR, the grantee must select "Not Visible on PDF" to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income received, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR.

The grantee must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

Use of DRGR data for HUD review and dissemination. HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring.

17. Recordkeeping.

When the grantee carries out activities directly, 24 CFR 570.490(b) is waived and the grantee shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the grantee's administration of CDBG-MIT funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the grantee shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the grantee; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system.

For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The grantee must report FHEO data in the DRGR system at the activity level.

18. HUD Review and Remedies for Noncompliance

Review of continuing capacity to carry out CDBG-funded activities in a timely manner. If HUD determines that the grantee has not carried out its CDBG-MIT activities and certifications in accordance with the requirements for CDBG-MIT funds, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the grantee's performance deficiencies, types of corrective actions the grantee has undertaken, and the success or likely success of such actions, and apply corrective and remedial actions.

Corrective and remedial actions. To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG-MIT program in a manner that facilitates recovery, particularly the alternative requirements permitting the grantee to act directly to carry out eligible activities, HUD waived 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for the grantee in accordance with the authorities applicable to entitlement grantees in

subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction or limitation of payments to the grantee.

Reduction, withdrawal, or adjustment of a grant, or other appropriate action. Prior to a reduction, withdrawal, or adjustment of a CDBG–MIT grant, or other actions taken pursuant to this section, the grantee shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described in this agreement, the Department may adjust, reduce, or withdraw the CDBG–MIT grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

19. Duration of Funding

The Appropriations Act requires that funds be expended within two years of the date that HUD obligates funds to a grantee, but also authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has waived this requirement for CDBG–MIT funds appropriated under the Public Law 115-56 and the Appropriations Act.

Notwithstanding the OMB waiver, however, the grantee is subject to the period of performance identified in this grant agreement.

The grantee is required to expend fifty percent of this CDBG–MIT grant on eligible activities within six years of HUD’s execution of this grant agreement and one hundred percent of this grant within twelve years of HUD’s execution of the agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD.

Further, consistent with 31 U.S.C. 1555 and OMB Circular No. A–11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining unobligated balance will be made unavailable for obligation or expenditure.

20. Closeout

HUD will close out the grant in accordance with the grant closeout requirements of [2 CFR 200.344].

II. Specific Conditions

1. **Program Risk**. Based on the risk posed by the scale and complexity of the grantee's disaster recovery activities and implementation, the following conditions are imposed:

(a) The grantee shall develop and maintain policies and procedures that describe for each activity funded: the CDBG-DR eligible activities; the required records management practices; procurement requirements; subrecipient oversight; technical assistance that will be provided to subrecipients; monitoring practices; policies for assigning direct costs to the correct activity; and timely expenditure of funds. These policies and procedures must be developed within 90 days of the date of this agreement and published to its website. The Grantee must update the policies and procedures on its website within 30 days of amending them. As part of routine monitoring, HUD will review policies and procedures and advise the Grantee whether policies and procedures present compliance concerns.

(b) The grantee shall participate in HUD provided launch technical assistance to support compliant program launch within 90 days.

(c) Within 90 days of execution of this grant agreement, hire staff with identified expertise in the following areas as proposed in the grantee's Implementation Plan:

- (1) Procurement
- (2) Contract Management
- (3) Compliance and Monitoring
- (4) Project Management
- (5) Environmental Compliance

2. **Program Risk - Limitation on Use of Funds for Electrical Power System Enhancements**.

Based on the risk posed by the complexity of activities designed to enhance or improve electrical power systems, the following condition is imposed:

Use of CDBG-DR funds for any activity that will enhance or improve electrical power systems, including the provision of non-Federal cost share for any Federally-funded activity related to electrical power systems, shall be limited to activities that meet the requirements for CDBG-DR funds and that are not inconsistent with the requirements of HUD's notice published in the *Federal Register* on June 22, 2021, *Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees; Electrical Power Systems in Puerto Rico and the U.S. Virgin Islands* (86 FR 32681), including any additional requirements on the use of CDBG-DR funds published in the electrical power systems notice, as that notice may be amended from time to time.

3. **Financial Management Risk - Submission of internal audit reports and posting of reports**. To address risks posed by a lack of financial management staff capacity and risks related to complexity of the Grantee's programs, the Grantee shall submit to HUD a copy of all reports

issued by its internal auditor, and if the internal auditor does not issue formal reports then the Grantee will instead submit every six months a summary of findings and assessments made by the auditor in that six-month period, which shall include an update on the status of all open findings.

4. Financial Management Capacity Risk. Based on the risk posed by the Grantee's limited financial management staff capacity and to ensure compliant implementation of the Grantee's internal control framework, the Grantee must:

- a) Submit supporting documentation in DRGR for all cost items included in voucher draw down requests. This will be used by HUD to test internal controls and compliance with cost principles under 2 CFR part 200. The Grantee must continue to submit supporting documentation for all items in voucher requests until HUD instructs the Grantee, in writing, that voucher supporting documentation submissions are no longer required.
- b) Amend its internal control framework within 90 days of the date HUD signs to include all information and policies necessary to address the CDBG-MIT expenditure deadline requirements of 50% at six years and 100% at twelve years.
- c) Within 90 days, the grantee will submit to HUD a copy of its chart of accounts reflecting the corresponding CDBG-MIT federal award for activities funded under this allocation.

If the grantee does not comply with the request for documentation, or if HUD determines that the documentation or internal controls do not meet requirements, HUD may take additional action, including suspension of the grantee's access to grant administration funds pending the resolution of identified issues.

5. Financial Management Related to Subaward Risk. Based on applicable requirements and risks related to charges to grants:

Based on the risk of noncompliance with grant requirements due to the use of subrecipients and agencies or instrumentalities of the Grantee that receive a subaward or otherwise carry out any part of this grant that do not have experience administering CDBG-DR or CDBG-MIT grants, the Grantee must do the following:

- (a) Within 90 days of the execution of this agreement or later date if extended by HUD, the Grantee must provide an updated monitoring plan for overseeing the performance of subrecipients and instrumentalities of the Grantee under the approved Action Plan for Disaster Recovery that includes:
 - A plan to monitor the activities of the subrecipients and instrumentalities of the Grantee as necessary to ensure that the funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions that apply to the use of the funds, and that performance goals are achieved, including:

- (1) Review of financial and performance reports required by the Grantee;
 - (2) Review of expenditures to determine that all uses of funds conform to the cost principles at 2 CFR Part 200, Subpart E – Cost Principles, and are net of all applicable credits;
- (b) Determine whether specific conditions on subawards to subrecipients or instrumentalities of the Grantee are needed and impose specific conditions as needed in accordance with [2 CFR §200.208].
- (c) Based on the subrecipient's or instrumentality of the Grantee's risk of noncompliance, ensure proper accountability and compliance with program requirements and achievement of performance goals by:
 - (1) Providing the subrecipient and instrumentality of the Grantee with training and technical assistance on program-related matters.
 - (2) Submitting policies and procedures that describe how, based on risk, the Grantee will perform on-site reviews of the subrecipient and instrumentality of the Grantee's program operations and arrange for agreed-upon-procedures engagements as described in 2 CFR 200.425;
- (d) For subrecipients only, verify that every (where not included in the audit of the Grantee) subrecipient is audited as required by Subpart F—Audit Requirements of 2 CFR part 200 when it is expected that the subrecipient's subaward expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR §200.501 Audit requirements.
- (e) Consider whether the results of the subrecipient and instrumentality of the Grantee's on-site reviews, or other monitoring necessitate adjustments to the Grantee's own records.
- (f) Enforce all interagency agreements with instrumentalities of the Grantee and take enforcement action against noncompliant subrecipients as described in 2 CFR §200.339.
- (g) Update the monitoring plan in accordance with this condition if after submittal of an updated monitoring plan, a new subrecipient or instrumentality of the Grantee is added/changed or an action plan amendment affects staff or contractors.

- (h) The Grantee shall require each subrecipient receiving a subaward under the Grant to prepare an indirect cost proposal prior to charging indirect costs to the subaward. The indirect cost proposal and related documentation to support the costs must be submitted to its cognizant agency for indirect costs if required pursuant to Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations or Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, or if the subrecipient is an Institution of Higher Education (IHE), pursuant to Appendix III to Part 200 — Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs. If a subrecipient does not have a cognizant agency, the Grantee is responsible for reviewing the indirect cost proposal if submission to a cognizant agency would otherwise be required.
- (i) All costs charged to the Grant or a subaward must comply with the cost principles specified at 2 CFR Part 200, Subpart E — Cost Principles. Neither the Grantee nor any subrecipient may charge a fee to the Grant or a subaward for the purpose of defraying costs of work performed by the Grantee or subrecipient that would otherwise be subject to such cost principles or would include an increment above allowable costs.

6. Subrecipient Management Risk. To address the risk caused by the financial condition of the Virgin Islands Water and Power Authority (VIWAPA), a CDBG-DR subrecipient of the Grantee, the following condition is imposed:

The Grantee must consult with the Federal members of the Energy Technical Coordination Team (TCT) as described in section V.A.2.e.(1) of the in the *Federal Register* published on June 22, 2021, *Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees; Electrical Power Systems in Puerto Rico and the U.S. Virgin Islands* (86 FR 32681) until HUD notifies the Grantee in writing that consultation is no longer required. To comply with this condition, the Grantee shall, at a minimum, provide written updates or hold a progress meeting with the Federal TCT members quarterly or when new projects are proposed to be funded with this award.

7. Community Engagement Risk. Based on the risk posed by the Grantee's lack of experience in administering a CDBG-DR grant, particularly experience in engaging the community after a major disaster, the Grantee must:

- (a) maintain staff with community engagement expertise who are directly responsible for compliance with the requirement that the grantee form citizen advisory committee (s) that shall meet in an open forum not less than twice annually in order to provide increased transparency in the implementation of CDBG-MIT funds, to solicit and respond to public

comment and input regarding the grantee's mitigation activities and to serve as an on-going public forum to continuously inform the grantee's CDBG-MIT projects and programs (requirement can be found in the *Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees* notice published at the Federal Register at 84 FR 45853); and

- (b) within 120 days of execution of this grant agreement, if not already completed, update its Citizen Participation Plan governing citizen participation for its CDBG-MTI funds to include specific outreach actions designed to mitigate risks arising from public pressure and lack of broad community input in the identification of unmet priority needs.

THE UNDERSIGNED, as authorized officials on behalf of the Grantee or the Secretary, have executed this **COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION (CDBG-MIT) GRANT AGREEMENT**, which shall be effective as of the date of execution by the Secretary.

United States Virgin Islands

GRANTEE

BY:


(Signature)

Dayna Clendinen

(Name)

Interim Executive Director
VI Housing Finance Authority

(Title)

April 17, 2023

(Date)

**HOUSING AND URBAN
DEVELOPMENT**

BY:


(Signature)

Claudia Monterosa
(Name)

DAS for Grant Programs
(Title)

4/25/2023
(Date)

Attachment 1

The grantee shall submit a schedule of its indirect cost rate(s) in the format set forth. The grantee shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule.

The schedule and any revisions HUD receives from the grantee shall be incorporated and made a part of the grant agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

<u>Administering Department/Agency</u>	<u>Indirect Cost Rate</u>	<u>Direct Cost Base</u>
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

Instructions: The grantee must identify each agency or department of the grantee that will carry out activities under the grant, the indirect cost rate applicable to each department/agency, and the type of direct cost base to which the rate will be applied. Do not include indirect cost rates for subrecipients. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs.