



United States Virgin Islands Housing Finance Authority

Resilient Multifamily Housing Program Policy and Procedures

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The policies and procedures stated in this manual are current as of April 26, 2024. This Manual represents the current version of the Virgin Islands Housing Finance Authority's (VIHFA) policies which shall provide general guidance for the operation of the Resilient Multifamily Housing Program for the CDBG-MIT Division. All manuals will be reviewed periodically and will be updated. Therefore, you are strongly urged to visit our website <https://www.vihfa.gov/> to ensure that you have the latest version. There may be times, however, when a policy or procedure will change before the manual is revised.

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1.0. Introduction

1.1. Background

In response to the 2017 disasters, Congress appropriated \$6.875 billion in Public Law 115-123 via the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018. Subsequently, the United States Department of Housing and Urban Development (HUD) published 84 FR 45838 (FR-6109-N-02) on August 30, 2019 which allocated the \$6.875 billion in Community Development Block Grant – Mitigation (CDBG-MIT) funds. Funding for the United States Virgin Islands (USVI) was included in the allocation. HUD published 84 FR 47528 (FR-6109-N-03) which allocated \$774,188,000 in CDBG-MIT funds to the United States Virgin Islands.

The purpose of the CDBG-MIT program, and as defined in the FRN, is to fund mitigation 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. The USVI Supplemental Notice provides specific guidance to the USVI that supplements the requirements outlined in the CDBG-MIT Main Notice.

The Virgin Islands Housing Finance Authority (VIHFA) is the lead agency, known as the “grantee” and the responsible entity for administering the CDBG-MIT funds allocated to the Territory. As the Grantee for the Community Development Block Grant Mitigation(CDBG-MIT) funds in the Territory, the Virgin Islands Housing Finance Authority (VIHFA) has established programs and projects in their CDBG-MIT Action Plan to address the needs of United States Virgin Islands (also referred to as “the Territory”) through hazard mitigation which is defined as any action taken to reduce or eliminate the long-term risk to human life and property from man-made or natural hazards. The USVI’s CDBG-MIT Action Plan details the Territory’s strategy to utilize the \$774,188,000 allocated in accordance with USVI Supplemental Notice.

Prior to the hurricanes, according to the Housing Demand Study completed in 2015, only six percent (6%) of overall listings for single-family homes for sale were available to households with up to 80% of AMI. Compounding the scarcity of affordable homes was the occurrence of the 2017 hurricanes. The impacts of the storms have significantly damaged much of the local housing stock, further decreasing the availability of affordable replacement homes for low- to moderate income individuals and families. Additionally, many of the current housing stock are in dire need of mitigative measures necessary to withstand any future extreme weather event.

Based on the available data from the MNA, ongoing disaster recovery needs, community and stakeholder input, and regulatory requirements, the VIHFA has determined that several key

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investments in long-term hazard mitigation for housing activities will be required. Therefore, CDBG-MIT funding has been allocated to support Multifamily Housing.

1.2. Scope

This document sets forth the policy governing the Resilient Multifamily Housing Program. These program guidelines are intended to aid and provide program activity guidance in program implementation, execution, and closeout and should not be construed as exhaustive instructions. All Program activities must comply with the policies hereby stated. In addition, all program staff must adhere to established program procedures and all federal and state laws and regulations in effect, as applicable, in the execution of program activities.

VIHFA reserves the faculty to authorize, in its sole discretion, the granting of Program benefits to any applicant, only when exceptional circumstances, not contemplated in these, justify it. Such faculty will be exercised on a case-by-case basis in compliance with local, state, and federal requirements. VIHFA is in no way obligated to grant the Program benefits in said cases.

2.0. Acronyms and Definitions

2.1 Agencies and Acronyms

ACOP Admissions and Continued Occupancy Policy

AMI Area Median Income

CDBG Community Development Block Grant

CDBG-DR Community Development Block Grant - Disaster Recovery

CFR Code of Federal Regulations

CPD Community Planning and Development

DBRA Davis-Bacon and the Related Acts

DOB Duplication of Benefits

DOL Department of Labor

ECR Estimated Cost of Repair

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FEMA Federal Emergency Management Agency

HCDA Housing and Community Development Act

HCV Housing Choice Vouchers

HQS Housing Quality Standards

HUD US Department of Housing and Urban Development

IMM Individual Mitigation Measures

LLC Limited Liability Corporation

LIHTC Low Income Housing Tax Credits

LMA Low- and Moderate-Income Area

LMH Low- and Moderate-Income Housing

LMI Low- and Moderate-Income

MBE Minority-owned Business Enterprise

MWBE Minority- and Women-owned Business Enterprises

NEPA National Environmental Policy Act

NFIP National Flood Insurance Program

OMB Office of Management and Budget

PCCB Policy Change Control Board

PII Personally Identifiable Information

RFI Request for Information

RFP Request for Proposals

RFQ Request for Qualifications

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SFHA Special Flood Hazard Area

UN Urgent Need

URA Uniform Relocation Act

USC United States Code

USVI United States Virgin Islands

WBE Women-owned Business Enterprise

VIHFA Virgin Islands Housing Finance Authority

2.2 Definitions

Acquisition: The utilization of CDBG-MIT funds to acquire real property. Grantees may use CDBG funds to acquire real property for any public purpose, as set forth in 24 CFR 570.201(a). Methods of acquisition include purchase, long-term lease (15+ years), donation, or otherwise.

Adjusted Gross Income (AGI): Also known as (AGI), is defined (per the IRS) as total income minus deductions, or "adjustments" to income that you are eligible to take. This includes:

- Gross income includes wages, dividends, capital gains, business and retirement income as well as all other forms of income.
 - Examples of income include tips, rents, interest, stock dividends, etc.
 - Adjustments to income are deductions that reduce total income to arrive at AGI. Examples of adjustments include half of the self-employment taxes you pay; self-employed health insurance premiums; contributions to certain retirement accounts(such as a traditional IRA); student loan interest paid; educator expenses, etc.

Affordability Period: The period during which a property must comply with CDBG-MIT program rules and regulations, including primary residency, income, and rent restrictions as applicable.

Applicant: A person or persons who have applied to VIHFA for approval of a CDBG-MIT home purchase and Homeowner Financial Assistance.

Appraisal: An estimate of a home's market value based on comparable recent sales in the home's immediate area or neighborhood, conducted by a professional appraiser.

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Area Median Income (AMI): Calculated annual limits based on HUD-estimated median family income with adjustments based on family size used for demonstrating LMI beneficiaries in the program. Other program documents may also refer to Area Median Family Income (AMFI).

Contractor: A person or company entering a contract to construct or repair houses and supervise building operations. The contractor must meet all Virgin Island and HUD requirements.

Common Area Under Roof: The total area under the common roof is primarily interior, conditioned spaces, and for single-story homes, equal to the footprint of the house. The term is also synonymous with the eligible area. In addition, exterior spaces such as detached porches and garages are not considered eligible areas.

Community Development Block Grant - Mitigation (CDBG-MIT): The Department of Housing and Urban Development (HUD)'s Community Development Block Grant Mitigation program was established by the applicable appropriations statute to assist communities impacted by disasters to recover.

CDBG-MIT Development Agreement: An agreement entered by the Grantee and Developer for the purpose of funding and carrying out CDBG-MIT-eligible activities on one or more CDBG-MIT-eligible properties.

CDBG-MIT Buyer: Applicant eligible to purchase a CDBG-MIT constructed home.

CDBG-MIT Property: A property that is rehabilitated, newly constructed, or reconstructed under the Subrecipient's agreement with the Grantee, utilizing CDBG-MIT funds.

CDBG-MIT Home: A CDBG-MIT property that is being sold to an owner-occupant.

CDBG-MIT Program Budget: The budget is attached to a CDBG-MIT Development Agreement showing projected total development costs, inclusive of soft and hard cost for the Subrecipient's entire CDBG-MIT program in the aggregate.

Cost Reasonableness: A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally funded. In determining the reasonableness of a given cost, please refer to 2CFR 200.404.

Davis-Bacon Act of 1931 (40 USC Part 3141 et seq.) and Related Acts: All laborers and mechanics employed by contractors or subcontractors in the performance of construction

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work financed in whole or in part with the assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality of determined by Secretary of Labor in accordance with the Davis-Bacon Act, as amended. This applies to the rehabilitation and reconstruction of residential property with 8 or more units.

Demolition: The clearance and proper disposal of dilapidated buildings and improvements.

Direct Selection: The grantee may choose specific projects to fund without a competitive application process. This means that when there are urgent community needs, such as housing rehabilitation, CDBG funds can be directly allocated to these projects. While still requiring public input and transparency, direct selection is a way to efficiently address pressing issues by swiftly allocating funds to projects that closely align with the program's goals of benefiting low- and moderate-income individuals and communities, without the need for a competitive grant application process.

Developer: defined by HUD as “[a] for-profit or private nonprofit individual or entity receiving HUD assistance from the grantee for the purpose of (1) acquiring homes and residential properties to rehabilitate for use or resale for residential purposes and (2) constructing new housing in connection with the redevelopment of demolished or vacant properties.”.

Duplication of Benefits: The Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) prohibits any person, business concern, or other entity from receiving financial assistance from CDBG-MIT funds with respect to any part of a loss resulting from a major disaster which he/she has already received financial assistance under any other program, from insurance, or any other source. It is an amount determined by the Program that may result in the reduction of an award value.

Environmental Review: All qualified projects must undergo an environmental review process. This process ensures that all activities comply with the National Environmental Policy Act (NEPA) and other applicable state, territorial, and federal laws.

Environmental Review Record (ERR): the document resulting from the required environmental review which includes a description of activities, evaluation of environmental impact, documentation of compliance with applicable environmental regulations, and an environmental determination.

FEMA-Designated High-Risk Area: Area designated by FEMA as vulnerable to significant wind and/or storm surge damage as well as areas located in the designated 100-year flood zone. These areas will be identified during the environmental review process for each participating jurisdiction.

Flood Hazard Area: Areas designated by FEMA at risk of flooding.

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Flood Insurance: The Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) requires that projects receiving federal assistance and located in an area identified by FEMA as a Special Flood Hazard Area (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP). To purchase flood insurance, a community must participate in the NFIP. If a community does not participate in the NFIP, federal assistance cannot be used in those areas.

Floodplain: FEMA designates floodplains as geographic zones subject to varying levels of flood risk. Each zone reflects the severity or type of potential flooding in the area.

"100-year floodplain" - The geographical area defined by FEMA as having a one percent chance of being inundated by a flood event in any given year.

"500-year floodplain" - The geographical area defined by FEMA as having a 0.2 percent chance of being inundated by a flood event in any given year.

Household: A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

Individual Mitigation Measures (IMM): Activities designed to mitigate /or reduce the risk of damage beyond the pre-disaster condition of a housing unit when the activities are above and beyond federal, state, or local requirements and the payment of flood insurance are not IMM activities. Examples of IMM activities include elevating a structure above the base flood elevation level, the addition of storm shutters, disaster-proof windows, roof straps, etc. if those improvements are not required to comply with local code requirements and did not exist on the housing unit prior to the disaster damage.

Low- and Moderate-Income (LMI): A household has low- and moderate-income if the household income (including income derived from assets) is at or below 80 percent of an area's median income. All income is based on the Area Median Income limits set annually by HUD for each county or metropolitan statistical area.

Low to Moderate Income (LMI) National Objective: Activities that benefit households whose total annual gross income does not exceed 80% of Area Median Income (AMI), adjusted for family size. Income eligibility will be determined and verified in accordance with 24 CFR Part 5 requirements using procedures as stated in the Technical Guide for Determining Income and Allowances, 3rd Edition (HUD-1780-CPD). The most current income limits, published annually by HUD, shall be used to verify the income eligibility of each household applying for assistance at the time assistance is provided.

Mitigation: Improvements made to reduce the possibility of a loss of life, property damage,

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personal and commercial hardship, as well as long-lasting monetary burdens. For example, implementing a flood mitigation program such as the acquisition of flood-prone property/housing, or the elevation of housing in floodplains are effective mitigation projects that can make residents and communities safer in the face of natural disasters.

Mixed-income Housing: Mixed-income housing development can include diverse types of housing units, such as apartments, townhomes, and/or single-family homes for people with a range of income levels.

Project Funding: Any governmental and private funds, including a Subrecipient’s cash, used to pay for the costs to redevelop a single CDBG-MIT-assisted property.

Project Budget: A budget for all acquisition, rehab/construction, and soft costs for a potential CDBG-MIT project. A Subrecipient must submit the budget to the Grantee and the property must pass Environmental Review and receive Authorization to Use Grant Funds before committing to the purchase of any property for use in the CDBG-MIT program.

Section 3: A provision of the Housing and Urban Development (HUD) Act of 1968 that requires recipients of certain HUD financial assistance, to the greatest extent feasible, to provide job training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

Section 504: A provision of the Rehabilitation Act of 1973 which provides that no qualified individual with a disability should, only because of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Urgent Need: An urgent need that exists because conditions pose a serious and immediate threat to the health or welfare of the community. The existing conditions must be recent or have recently become urgent and the subrecipient cannot finance the activities on its own because other funding sources are not available. Subrecipients or the state must document how each program and/or activity funded under this category responds to a disaster-related impact. See 24 CFR 570.208(c).

Urgent Need Mitigation (UNM) - This national objective was created for CDBG-MIT programs. Project activities are eligible if they alleviate existing conditions that pose a serious and immediate threat to the critical community lifelines, are of recent origin or recently became urgent, and the grantee is unable to find other available funds to support the activity.

3.0. Resilient Multifamily Housing Overview

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According to the US Department of Housing and Urban Development (HUD), multifamily housing is defined as:

- A property with at least five residential units, each occupied by one or more individuals, and equipped with a complete kitchen and full bath.
- A structure containing more than one separate residential dwelling unit, intended for use or occupancy as the home or residence of one or more persons.
- A multifamily project consisting of five or more units that have had a mortgage insured under the National Housing Act or have been subject to a loan under section 202 of the Housing Act of 1959.

This definition provides the framework for the Resilient Multifamily Housing Program, ensuring a focus on larger-scale developments that contribute significantly to affordable housing options for LMI households in the Virgin Islands.

The Resilient Multifamily Housing Program encompasses a comprehensive approach to address the critical need for affordable housing, particularly for low- and moderate-income (LMI) households. This program allows for the acquisition, rehabilitation, reconstruction, and new construction of multifamily developments, with the primary aim of repairing, restoring, and expanding the affordable housing stock.

All CDBG-MIT-funded housing development and preservation activities must, at a minimum, incorporate hazard mitigation measures into design and construction. While green building standards are optional within this program, it is preferred and encouraged. The use of alternative, more resilient construction materials, and methods are also encouraged. CDBG-MIT funds can be utilized for various purposes, including land acquisition, site preparation, construction costs, and related development expenses. Projects that integrate resilient design features, such as elevated structures and hurricane-resistant materials, are given priority to mitigate against potential future disasters. LMI households, encompassing families, individuals, and seniors, are the central beneficiaries of this initiative. These measures aim to reduce the impacts of future disasters and increase the long-term affordability of the housing units.

This program encompasses three key components: the Acquisition of Real Property and Homeowner Conversion, New Construction, and Rehabilitation of existing Multifamily Housing Stock. Through property acquisition, the program aims to secure suitable locations for multifamily housing development. New construction projects are designed to create entirely new multifamily housing units, thus increasing the overall housing stock available for LMI households. The program focuses on the rehabilitation of existing multifamily housing units, ensuring that older properties are renovated and upgraded to meet modern standards of safety, energy efficiency, and livability. By acquiring, repairing, restoring, and increasing the supply of affordable multifamily housing units, this program not only provides much-needed housing options but also contributes to the overall resilience and stability of communities during extreme weather events/ disasters.

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Under this program, a crucial requirement is that a minimum of 51 percent of the units in multifamily projects must be restricted for affordability. For projects involving the rehabilitation or reconstruction of multifamily rental properties with eight or more units, an affordability period of fifteen (15) years is mandated. In the case of new construction of multifamily rental units with five or more units, a minimum affordability period of twenty (20) years is required. These affordability periods are specifically for LMI individuals earning 80 percent or less of the Area Median Family Income (AMFI) at HUD-established affordable rents.

Importantly, if a rental project undergoing rehabilitation or reconstruction already has existing affordability requirements tied to other funding sources, the 15-year and 20-year affordability periods can run concurrently or overlap with these other funding requirements. This allows for the coordination and alignment of affordability mandates across various funding sources.

The Resilient Multifamily Housing Program’s objective is to enhance the availability of secure, cost-effective, and resilient multifamily housing choices for low- and moderate-income (LMI) households through new construction, and/or real property acquisition and rehabilitation, and homeownership conversion. To meet this objective, the Resilience Multifamily Housing Program has three subprograms:

1. Real Property Acquisition and Homeownership Conversion
2. New Multifamily Construction Program
3. Multifamily Housing Rehabilitation Program

This program and its three (3) subprograms address the following Community lifelines as outlined by FEMA, which are integral for community functionality and resilience.

- Safety and Security lifeline
- Food, Shelter, and Housing lifeline

3.1. Real Property Acquisition and Homeownership Conversion Program Overview

Real Property Acquisition and Homeownership Conversion under the CDBG-MIT program provides a range of benefits that contribute to community resilience, affordability, economic growth, and environmental preservation. It is a proactive approach to mitigating risks from natural disasters while also creating opportunities for community improvement and sustainable development. "Real Property Acquisition" is the process of obtaining land or real estate for public purposes, such as developing affordable housing or community facilities. CDBG funds can cover costs like purchase price, closing fees, and relocation assistance, ensuring the acquired properties benefit low- and moderate-income individuals. Properties acquired through CDBG may have

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affordability requirements to maintain their benefits for LMI households, and compliance with federal guidelines like the Uniform Relocation Assistance and Real Property Acquisition Policies Act is essential. Homeownership Conversion involves transforming rental units into affordable homes for LMI households, with CDBG-MIT funds supporting activities like property rehabilitation and financial assistance for homebuyers. This process aims to increase homeownership rates among LMI households, ensuring affordability for future buyers. Compliance with CDBG regulations is crucial for implementing Homeownership Conversion activities successfully. Both Real Property Acquisition and Homeownership Conversion are vital CDBG initiatives that contribute to community development, housing affordability, and the promotion of homeownership among low- and moderate-income individuals and families.

Under this program, the following activities shall be considered:

- Acquisition, rehabilitation, and conversion of existing market-rate multifamily housing to affordable multifamily housing.
- Acquisition, rehabilitation, and conversion of previously non-residential structures for affordable multifamily housing (where permissible with demonstrated zoning/use modifications).
- Acquisition of vacant land and construction of new affordable multifamily housing initiative

3.2. Multifamily Housing Rehabilitation Program

The Multifamily Rehabilitation Program is designed to address the critical need for improving existing multifamily housing stock, particularly for low- and moderate-income (LMI) households. This program aims to enhance the safety, quality, and resilience of multifamily properties through rehabilitation efforts. Key objectives include upgrading and modernizing existing housing to meet current safety, accessibility, and energy efficiency standards, preserving affordable housing options for LMI households, and promoting community stability. The program provides funding for property rehabilitation activities such as repairs, upgrades, and improvements to address structural deficiencies, safety hazards, and outdated systems. Eligible applicants include property owners, developers, nonprofit organizations, and housing authorities. Applications undergo a comprehensive review process, prioritizing projects that demonstrate strong community support, innovative design, and a clear plan for meeting affordability requirements. Affordability guidelines ensure that rehabilitated units remain accessible to LMI households, with provisions for long-term affordability retention. Compliance measures are in place to ensure that funded projects meet all federal, state, and local regulations, and ongoing monitoring is conducted to verify continued compliance and affordability. Overall, the CDBG Multifamily Rehabilitation Program aims to revitalize existing housing stock and include mitigative measures in the rehabilitation, improve living conditions for residents, and contribute to community development and stability. Activities to be considered under this program include:

- Rehabilitation and Reconstruction of existing affordable multifamily housing (more than

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- 5 units)
- Preservation through rehabilitation of existing affordable multifamily housing

3.3. The Multifamily New Construction Housing Program

VIHFA has established the Multifamily New Construction Housing Program (Program), a new construction affordable housing program to help address unmet housing needs resulting from the disasters. The Program will address the need by developing newly constructed multifamily rental units. The Program’s primary goal is to enhance the availability of secure, cost-effective, and resilient multifamily housing choices for low and moderate-income (LMI) households by constructing new housing that aligns with modern safety and energy efficiency standards. The Program will offer funding subsidies for the construction of new multifamily structures (five or more units) to replace units in the local market to increase housing stock. The new units will incorporate resilient building practices to mitigate future risks of hazards; green standards are strongly encouraged.

3.4. Overall Method of Distribution

Allocation Amount:: \$ 100,000,000

Maximum Award Amount: \$50,000,000

Method of Distribution: Direct Selection

Administering Model: Subrecipient, Developer

National Objectives: Low- and- Moderate Income Area; Low-and Moderate-Income Housing; Urgent Need Mitigation

LMI Projection: 50%

Eligible Activities:

- Section 105(a)(1) the acquisition of real property
- Section 105(a)(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings)
- HCDA Section 105(a)(5) Architectural Barrier Removal
- HCDA Section 105(a)(11) Relocation

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- Section 105(a)(14) (14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property
- Section 105(a)(18) the rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937;

Eligible Applicants:

- Public Housing Authority (PHA)
 - A government agency at the local or state level in the United States that is responsible for the management and operation of public housing programs. These programs aim to provide affordable housing options for low-income individuals and families. PHAs are typically created and funded by the federal government through the Department of Housing and Urban Development (HUD).
- Units of Government of the USVI
 - Entities within the government structure of the U.S. Virgin Islands, including those with some level of independence or autonomy in their operations.
- For-profit Developers
 - Entities or individuals in the business of real estate development or construction who operate with the primary goal of making a profit.
- Not-for-profit Developers
 - Entities or individuals engaged in real estate development or construction projects with the primary goal of serving a social or community-oriented purpose, rather than generating profits for private individuals or shareholders.

Geographic Areas Served: Projects across the Territory are eligible for this program as priorities are determined.

Program Start and End Date: Quarter 3, 2024 through Quarter 3, 2035.

Risks Addressed/Community Lifelines:

- Safety and Security lifeline
- Food, Shelter, and Housing lifeline

3.4.1. Real Property Acquisition and Homeownership Conversion Method of Distribution

Allocation Amount: \$30,000,000

Maximum Award Amount: \$30,000,000

Method of Distribution: Direct Selection

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Distribution Model: Subrecipient, Developer

National Objectives: Low- and- Moderate Income Area; Low-and Moderate-Income Housing;

LMI Projection: 50%

Eligible Activities:

- Section 105(a)(1) the acquisition of real property
- Section 105(a)(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings)
- HCDA Section 105(a)(5) Architectural Barrier Removal
- HCDA Section 105(a)(11) Relocation
- Section 105(a)(14) Provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property

Eligible Applicants:

- Public Housing Authority (PHA)
- Units of Government of the USVI to include Semi-Autonomous Agencies
- For-profit Developers
- Not-for-profit Developers

Geographic Areas Served: Projects across the Territory are eligible for this program as priorities are determined.

Program Start and End Date: Quarter 3, 2024 through Quarter 3, 2035.

RisksAddressed/Community Lifelines:

- Safety and Security lifeline
- Food, Shelter, and Housing lifeline

3.4.2. Multifamily Housing Rehabilitation Method of Distribution

Allocation Amount: \$50,000,000

Maximum Award Amount: \$50,000,000

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Method of Distribution: Direct Selection

Distribution Model: Subrecipient, Developer

National Objectives: Low- and- Moderate Income Area; Low-and Moderate-Income Housing;

LMI Projection: 50%

Eligible Activities:

- Section 105(a)(1) the acquisition of real property
- Section 105(a)(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings)
- HCDA Section 105(a)(5) Architectural Barrier Removal
- HCDA Section 105(a)(11) Relocation
- Section 105(a)(14) Provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property

Eligible Applicants:

- Public Housing Authority (PHA)
- Units of Government of the USVI to include Semi-Autonomous Agencies
- For-profit Developers
- Not-for-profit Developers

Geographic Areas Served: Projects across the Territory are eligible for this program as priorities are determined.

Program Start and End Date: Quarter 3, 2024 through Quarter 3, 2035.

RisksAddressed/Community Lifelines:

- Safety and Security lifeline
- Food, Shelter, and Housing lifeline

3.4.3. New Multifamily Housing Construction Method of Distribution

Allocation Amount: \$20,000,000

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Maximum Award Amount: \$ 20,000,000

Method of Distribution: Direct Selection

Distribution Model: Subrecipient, Developer

National Objectives: Low- and- Moderate Income Area; Low-and Moderate-Income Housing;

LMI Projection: 50%

Eligible Activities:

- Section 105(a)(1) the acquisition of real property
- Section 105(a)(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings)
- HCDA Section 105(a)(5) Architectural Barrier Removal
- HCDA Section 105(a)(11) Relocation

Developers must meet program minimum property standards; and may exceed the minimum property standards, if project costs funded by the Program meet cost reasonableness requirements. Upgrades above minimum property standards must be paid for with private funds.

Eligible Applicants:

- Public Housing Authority (PHA)
- Units of Government of the USVI to include Semi-Autonomous Agencies
- For-profit Developers
- Not-for-profit Developers

Geographic Areas Served: Projects across the Territory are eligible for this program as priorities are determined.

Program Start and End Date: Quarter 3, 2024 through Quarter 3, 2035.

RisksAddressed/Community Lifelines:

- Safety and Security lifeline
- Food, Shelter, and Housing lifeline

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3.5. Maximum Award

While for all three subprograms have identified n award cap, there may be circumstances where additional costs may be incurred and will be reviewed against cost reasonableness and resiliency measures on a case-by-case basis. Awards may be in the form of a loan or grant; In some instances, a loan will be the required structure for financing rental development. If this is the case, the terms of the loan may be forgivable, as applicable.

To direct sufficient levels of assistance to those most in need, especially low- to moderate-income and minority households, a higher overall dollar cap amount may be applied to those properties that provide a significant number of units designated for Very Low Income (VLI) households (whose incomes do not exceed 30% AMI), special needs, and other vulnerable populations, or include Low Income Housing Tax Credits which do not allow households above 80% AMI, in instances where income averaging as permitted under the rules of the LIHTC program is part of the plan of finance for the project.

Projects that combine other sources of financing (local, federal, and private) will be evaluated to ensure that no more CDBG-MIT funding than is necessary to ensure successful development of the affordable housing units. Documentation demonstrating that other available financing sources have been maximized, resulting in the lowest amount of CDBG-MIT funding necessary to assure project feasibility.

4.0. Funding Sources

To incentivize the development of this stock, the Territory will provide financing appropriate to the project. Multi-family rental development of eight (8) units or more will be required to adhere to Davis Bacon requirements. Assistance will be provided as one of the following structures:

4.1. Loans

4.1.1. Amortized Loans

- Requires repayment (annually).
- Interest rate will range from zero percent (0%) to rates that will typically be lower than market lending rates (interest rates will be determined by cash flow projections and will be negotiated with the implementing agency), plus allowable fees.
- A Mortgage will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

4.1.2. Deferred Payment Loans

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- Loan terms can be from ten (10) – twenty (20) years, or at the sale or transfer of the property.
- Interest rate will range from zero percent (0%) to rates that will typically be lower than market lending rates (interest rates will be determined by cash flow projections and will be negotiated with the implementing agency, plus allowable fees.
- A Mortgage will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

4.1.3 Forgivable Loans

- The CDBG-MIT funding will be provided in the form of a deferred, no-interest loan with a 20-year term that will be forgivable at the expiration of the affordability period. To be eligible for forgiveness at the expiration of the affordability period (defined below), the project must be in good standing and without outstanding or uncured defaults.
- A Mortgage will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

4.1.4 Non-Interest-Bearing Loans

- Loan terms vary and will be negotiated with the Grantee.
- Interest rate is zero percent (0%).
- The principal is paid back on a regular basis (annually), but no interest is charged.
- A Mortgage will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

4.2 Grants

- Provided with no requirement or expectation for repayment.
- Most used for projects with special needs populations.
- A Mortgage will be secured for the length of the Affordability Period, or the term of the grant, whichever is longer

5.0. Program Requirements

All projects must meet the definition of a mitigation activity:

- 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.

5.1. Eligibility

5.1.1. Eligible Applicants

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Eligible applicants include governmental and non-governmental entities and owners of multi-family housing rental development dedicated for low-and moderate-income households. Eligible applicants are:

- Public Housing Authority (PHA)
- Units of Government of the USVI including Semiautonomous agency
- For-profit Developers
- Not-for-profit Developers

5.1.2. Eligible Activities

- HCDA Section 105(a)(1) Acquisition of Real Property
- HCDA Section 105(a)(4) Clearance, Rehabilitation, Reconstruction, and Construction of Buildings (including Housing)
- HCDA Section 105(a)(5) Architectural Barrier Removal
- HCDA Section 105(a)(11) Relocation

Developers must meet program minimum property standards; and may exceed the minimum property standards, if project costs funded by the Program meet cost reasonableness requirements. Upgrades above minimum property standards must be paid for with private funds. Program funds may be used for:

- Acquisition, site preparation, construction, and related soft costs (including environmental health hazard mitigation costs) required for the new construction or rehabilitation of affordable housing developments. (Acquisition is not eligible as a stand-alone activity.) Site work may be an allowable construction cost to the extent it is necessary to render the residential units decent, safe, and sanitary. Site work includes grading and excavation, as well as installation of the septic and infiltration systems, utilities and other ancillary residential structures and improvements.
- In projects combining residential and non-residential uses, Program funds may only be used for eligible costs attributable to the residential component of the project.
- Reimbursement of eligible repair/replacement costs, acquisition, capital costs and related soft costs (including environmental health hazard mitigation costs), associated with the new construction or rehabilitation of affordable housing developments related to the repair of disaster-impacted property.
- When practical and warranted, reimbursement for cost of mitigating future damage (including elevation when practicable and cost effective) for properties located within a 100- year floodplain.
- “Gap financing” for Low Income Housing Tax Credit projects to reduce debt service and increase long term viability.
- Assistance for cost-effective mitigation activities including but not limited to:
 - The replacement of disaster-impacted non-luxury residential appliances.
 - Elevation of substantially damaged properties located within the 100-year floodplain:

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- If elevating, the structure must be elevated to at least two (2) feet above the Base Flood Elevation or to a level dictated by the local building authority, whichever is higher.
- Elevation of electrical systems and components.
- Securing fuel tanks.
- Use of flood resistant building materials below base flood elevation.
- Installation of flood vents.
- Installation of backflow valves (only if structure is elevated).
- Installation of roof strapping (only if structure is elevated).

5.1.3. Ineligible Activities

As a general rule, any activity that is not authorized under the provisions of 24CFR 570.201 through 570.206 is ineligible to be assisted with CDBG funds unless the activity is authorized under the provisions.

CDBG-MIT funds will not be used for privately owned utilities nor providing assistance for the rehabilitation of any building used for the general conduct of government nor for programs and projects to provide emergency response services. Additionally, the use of CDBG-MIT funds is prohibited from reimbursing homeowners, businesses or entities (other than grantees, local governments, and subrecipients) for mitigation activities completed prior to the applicability date of the August 30, 2019 notice.

Categorically Ineligible

Except on a limited basis, as referenced, the following activities may not be assisted with CDBG funds under any circumstance:

- General government expenses, §570.207(a)(2), and
- Political activities, §570.207(a)(3)

Generally Ineligible

Unless authorized, the following activities may not be assisted with CDBG funds.

- Furnishings and personal property, § 570.201(e). §570.203(b). §570.207(b)(1)
- Operating and maintenance expenses, §570.201(e); §570.201(f), and §570.206; §570.207(b)(2).
- Additionally, activities performed in relation to the proposed project conducted prior to the execution of an agreement with VIHFA shall also be ineligible.

Any activity performed in relation to the proposed project conducted prior to the execution of an agreement with VIHFA shall also be ineligible unless pre-award costs are authorized.

5.1.4. Geographic Areas Served

All properties must be located within the U.S. Virgin Islands jurisdiction of St. Croix, St. Thomas,

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and St. John. This will be verified by the Office of the Lieutenant Governor’s Recorder of Deeds Division.

5.2. Federal Labor Standards

Every CDBG-MIT project with a construction contract regardless if it is for the construction or rehabilitation of eight (8) or more CDBG-MIT-assisted units is required to comply with all of the following federal labor standards: the Davis Bacon and Related Acts (DBRA), the Copeland “Anti-Kickback” Act (the Anti-Kickback Act), the Contract Work Hours and Safety Standards Act, as amended (CWHSSA), and the Fair Labor Standards Act of 1938, as amended (FLSA).

The term “CDBG-MIT Assisted Unit” means the housing units developed with the assistance of CDBG-MIT funds, including non-construction-related assistance such as land acquisition or down payment assistance.

The Davis-Bacon and Related Acts, published in Chapter 3, section 276(a) 7 et seq. of U.S.C. Title 40 ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. According to the Department of Labor (DOL) regulations, the term mechanics and laborers “includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial...” The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.

Federal prevailing wages must be paid on CDBG-MIT projects involving site development, construction, and rehabilitation where there are 8 or more CDGR-MIT assisted units.

5.3. Property Standards Requirements

In accordance with the US Department of Housing and Urban Development’s (HUD) regulations for implementing the National Environmental Policy Act at 24 CFR Part 58, all properties must meet HUD’s Housing Quality Standards (HQS). All properties that are being proposed for use in HUD programs are free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

The Coastal Barrier Resources Act (**CBRA**), *16 U.S.C. §3501 et seq.*, protects coastal areas that serve as barriers against wind and tidal forces caused by coastal storms and serve as a habitat for aquatic species. In compliance with the Act, if the property is determined to be located within a Coastal Barrier Resources Area, the property will **not** qualify for CDGB-MIT assistance.

5.4. National Objectives

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In accordance with 24 CFR 570.208, Section 104(b)(3) of the HCDA, and as further outlined within the waivers and alternative requirements at Federal Register Notice 84 FR 45838, all CDBG-MIT funded activities must satisfy either the Low-to Moderate-Income (LMI) or the new Urgent Need Mitigation (UNM) national objective.

National Objective Compliance

Under CDBG-MIT, a tieback to a prior disaster is not required; however, eligible projects must occur within the territory. VIHFA as well as the subrecipient/developer must demonstrate compliance with LMI or UNM national objectives for its CDBG-MIT activities.

The Resilient Multifamily Housing Programs will satisfy the Low-to-Moderate-Income (LMI) Housing as well as the Low-to-Moderate Income Area (LMA).

At least 50% of CDBG-MIT funds must benefit Low-to-Moderate-Income persons. VIHFA reserves the right to make funding decisions to achieve this requirement.

5.4. Duplication of Benefits

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act ([42 U.S.C.§5155](#)) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the Department of Housing and Urban Development’s CDBG-MIT program may not be used for funding previously identified for the same purpose. As mandated by law, all projects receiving CDBG-MIT funding must undergo an individualized analysis of duplication of benefits to ensure no funds have been or will be received for the same purpose as the intended CDBG-MIT grant.

Applicants must disclose all sources of funding for project finance in accordance with the following list of potential sources of funding that may result in a duplication of benefits. Generally, financial assistance received from any other source that is provided for the same purpose as the CBDG-MIT funds is considered a Duplication of Benefit (DOB).

- All forms of insurance benefits received
- Federal Emergency Management Agency (FEMA) assistance received
- Small Business Administration (SBA) assistance received
- National Flood Insurance Program (NFIP) assistance received
- Other federal, state, or local funding received
- Other nonprofit, private sector, or charitable funding received.

The Program must consider the total assistance available for the project. This includes all benefits, including cash, insurance proceeds, grants received. Project DOB information must be maintained by Subrecipients and reported to VIHFA throughout the life of the project. Reporting should occur

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at any point that such information becomes available, including:

- During scoping process development, pre-award, and approval;
- During the grant period of performance;
- During closeout; and
- After grant closeout, duplicative funds are received at a later date.

5.4.1. Duplication of Benefits Verification

The Programs will include a duplication of benefits (DOB) review as part of the application and award calculation process. Applicants are required to provide support documentation, including award letters, declined letters and other documentation supporting the amount, sources and uses of funding received for planning or public services efforts related to the 2017 disaster events. Program participants and employees will be required during the application process to certify they are not receiving additional funding, such as charitable contributions, scholarships, or other sources of duplicative financial assistance. VIHFA may contact other funders directly to confirm information submitted by applicants. The following will be checked as part of the verification process:

- All forms of insurance benefits received
- Federal Emergency Management Agency (FEMA) assistance received
- Small Business Administration (SBA) assistance received
- National Flood Insurance Program (NFIP) assistance received
- Other federal, state, or local funding received
- Other nonprofit, private sector, or charitable funding received.

5.4.2 Duplication of Benefits Calculations

Subrecipients must complete DOB calculations as part of the application process and in the application. The application requests information about all other sources of funding the agency must be aware of that may impact the DOB. A standard calculation method will be used by Program staff to determine if a federal funding duplication is present. The following considerations will be part of the DOB analysis:

- Applicant's total need
- Total assistance available to the applicant
- Exclusion of non-duplicative amounts (amounts for a different purpose or for the same purpose but a different allowable cost as well as undisbursed loan amounts)
- Determined DOB based on subtraction of exclusion from total assistance
- Maximum need determined based on subtraction of DOB amount from the total need

It is the responsibility of VIHFA to ensure that project participants comply with all federal laws and regulations. Subrecipients are responsible for verifying there is no duplication of resources, such as charitable or public grants. Additionally, CDBG-MIT funds may not be used to supplant

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local resources.

If a DOB exists, the subrecipient will report all DOB and make appropriate deductions. VIHFA maintains records in accordance with Federal grants requirements and assures that the agency has accurately completed DOB reviews and made deductions as appropriate.

5.4.3. Additional Duplication of Benefits Requirements for CDBG-MIT

The additional DOB requirements apply to the treatment of subsidized loans in a DOB analysis. There are exceptions when subsidized loans are not considered a DOB. This includes:

- Short-term subsidized loans for costs later reimbursed with CDBG-DR/MIT
 - If VIHFA or the subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.
- Declined subsidized loans including declined SBA loans, shall not be treated as a DOB.
 - The amount of a subsidized loan that is declined or cancelled is not a DOB
 - To exclude declined or cancelled loan amounts from the DOB calculation, VIHFA must document that all or a portion of the subsidized loan is cancelled or declined unless the loan qualifies under an exclusion.
 - Declined SBA Loans: Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.
- Cancelled Loans
 - Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant.
 - The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available:
 - A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or
 - a legally binding agreement between VIHFA and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.
 - Any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies.
 - For cancelled SBA loans, the VIHFA must notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

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- The subsidized loan meets the requirements for a statutory exception under the DRRA’s amendments to the Stafford Act
 - Subsidized loans made in response to DRRA Qualifying Disasters that were accepted but have undisbursed loan amounts (e.g., accepted but undisbursed SBA loan amounts) are not considered a DOB.

5.5. Prioritization Criteria

The program will prioritize LMI applicants able to qualify for homeownership. Second priority will be given to pre-qualified applicants with incomes up to 120% AMI.

6.0. Project Selection

VIHFA CDBG-MIT Division will work with all subrecipients and developers to develop Project Scope and Budget Proposals for each of the entities’ projects. VIHFA will review the projects according to Program priorities and criteria for funding. Eligible and feasible projects submitted through this process are reviewed by VIHFA CDBG-MIT for available funding. Should there be additional funding for additional phases, as described in the Action Plan or Amendments, the priorities may be expanded.

Each project requires the submission of a separate application. This ensures that each project is evaluated individually and allows for a thorough review process tailored to the specific details and requirements of the individual project. Submitting one application per project also facilitates clear communication and documentation, enabling efficient tracking of progress and accountability throughout the review and approval process. By adhering to this requirement, we can ensure that each project receives the attention and consideration it deserves, ultimately contributing to the success of our overall objectives.

Projects will be selected from the VIHFA project lists, and no competitive criteria is required. Should there be additional funding available, competitive criteria for future phases may be developed based on the Territory’s needs at the time.

6.1. Direct Selection of Applicants

The project approval/selection process will occur in two key phases: application approval and favorable environmental review. All the components of the Resilient Multifamily Housing Program will utilize a direct selection of applicants process. Direct Selection is the selection of projects fitting an identified project need and subrecipient profile established by the Authority. Applications will be evaluated to determine eligibility, what risk is being mitigated, the risk mitigation value, and the benefit to the territory. Their level of risk will also be assessed, and the final environmental review will be performed. VIHFA will consider applicants and participants

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into the Program based on the following.

- Applicants’ ability to meet the eligibility and national objective of the Program.
- Applicants’ ability to use grant funds, criteria of the Programs, and the availability of funds
- The availability of grant funds, the allocability of the project, and the cost reasonableness.
- Capacity to complete the project scope of with within the set grant period.

6.2. Project Application Screening- Scope and Eligibility

Applicants will be screened to ensure compliance with eligibility requirements and program prioritization criteria. In that screening process, applicants will be required to provide complete and accurate information regarding their proposed projects and the program’s eligibility criteria. Failure to disclose accurate and complete information may affect eligibility and all such instances will be referred to the Program for further action.

All project applications must meet the following threshold requirements to receive CDBG-MIT funding:

- Be authorized to do business in the U.S. Virgin Islands. Demonstrate that the project scope meets the eligible activities for the program.
- Demonstrate a project scope that meets all eligible activity requirements.
- Demonstrate control of the site on which the project will be developed. This could be through a demonstration of ownership of property via deed, a property acquisition plan, or, on a case-by-case basis, an executed long-term lease agreement with property owner consent and agreement to participate
- Demonstrate capacity to carry out the project through:
 - Current financial and organizational structure;
 - Business plan;
 - Past performance of similar projects;
 - Audited financial statements and/or most recent tax returns.
- Demonstrate experience developing and implementing projects with a similar scope to the proposed project. This requirement also applies to the eligible subrecipient/developer’s proposed contractors, inspection services, designers, and any other critical service providers. Specific organization and staff experience requirements will be outlined in the Application instructions, as applicable. If applicants do not themselves possess the ability to manage and implement the project, they must secure qualified staff either in-house or via contract to facilitate successful project management and implementation.

6.3. Capacity Assessment (Risk Analysis)

The Risk/Capacity Assessment is to assess the subrecipient’s risk and proactively identify the capacity and management practices of the potential subrecipients/developers of CDBG-MIT funds. These types of assessments can be a useful tool in identifying ways to improve the economy,

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efficiency, and effectiveness of mitigation operations, understand the level of compliance with relevant rules and regulations, and provide guidance and insight for ongoing monitoring of subrecipients and developers. The methodology to be used is based on the 2 CFR 200 requirements and HUD’s guidance on assessing the capacity of subrecipients.

Each applicant will undergo a capacity assessment after the application reaches phase two of the application review process. Applicants are required to provide documents and information as part of the assessment process. The capacity assessment may result in special conditions in the Subrecipient Agreement (SRA) to ensure the capacity to carry out mitigation activities in a timely manner. As such, the completion of the Capacity Assessment is part of the application process and a necessary prerequisite to entering into an SRA. The results of the assessment will also determine the monitoring plan should the applicant become a subrecipient. See Compliance and Monitoring Policy and Procedure.

6.4. Environmental Review

All CDBG-MIT and related activities are subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as the HUD environmental regulations provided in 24 CFR part 58. The primary purpose of these regulations is to protect and enhance the quality of the natural environment. To meet these requirements, the subrecipient is responsible for ensuring that environmental reviews are completed for all projects. The environmental review must be completed prior to any funds being committed or disbursed toward a project. If an environmental condition identified on a proposed activity site cannot be cleared, the site may not be an eligible location for activities.

The environmental review documents compliance with 24 CFR Part 58, NEPA, and all related laws, authorities, and executive orders. No work may start on a proposed Project, or proposed site acquisition, if applicable, before both the federal and state environmental review processes are completed, even if that work/acquisition is being done using non-federal funds. VIHFA does not reimburse Projects that have been determined to have a Finding of Significant Impact (FOSI).

VIHFA is permitted to adopt FEMA’s environmental review if that federal agency has previously performed an environmental review for assistance under the Robert T. Stafford Disaster Relief and Emergency Assistant Act. In those cases, the work performed by FEMA and HUD must be exactly the same work.

6.4.1. Choice Limiting Actions

Once an Application has been submitted by a Subrecipient for the use of CDBG-MIT funds, there can be no choice-limiting actions on the part of the Subrecipient until environmental clearance is received in the form of an Authority to Use Grant Funds (AUGF) or environmental clearance letter issued by VIHFA.

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Choice Limiting Actions are put in place to prevent a subrecipient from investing in a Project before all necessary environmental clearances are obtained. Market studies, environmental studies, plan development, engineering or design costs, inspections, and tests are not considered “choice-limiting” actions. Choice-limiting actions are defined as any activity that commits HUD funds and would have an adverse environmental impact or limit the choice of reasonable alternatives, such as acquisition by the Subrecipient, construction, demolition of buildings or infrastructure, or rehabilitation or reconstruction of buildings or infrastructure.

Per 24 CFR Part 58.22, failure to comply with the prohibition against committing funds or taking physical action (using either HUD funds or non-HUD funds) before the completion of the environmental review process could result in loss of HUD assistance, cancellation of the Project, reimbursement by Subrecipient to VIHFA for the amount expended, or suspension of the disbursement of funds for the affected activity.

6.4.2 Flood Insurance and Floodplain Elevation Requirements

The Subrecipient shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001). The Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, that flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, will be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation.

Activities in an area identified as flood prone for land use or hazard mitigation planning purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA’s most current flood advisory maps, must minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55.

A structure (i.e. walled or roofed buildings, including mobile homes and gas or liquid storage tanks) or facility in the 500-year (or 0.2 percent annual chance) floodplain under a Critical Action (as defined at 24 CFR 55.2(b)(3)) must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 1 percent annual floodplain. If the 500 year floodplain or elevation is unavailable, the structure (i.e. walled or roofed buildings, including mobile homes and gas or liquid storage tanks) or facility in the 100-year floodplain under a Critical Action (as defined at 24 CFR 55.2(b)(3)) must be elevated or floodproofed at least three feet above the 100-year floodplain elevation.

Floodplain Elevation

Subrecipients must comply with the national floodplain elevation standards for new construction,

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repair of substantially damaged structures, or substantial improvements to public facilities in flood hazard areas.

New housing within a 100-year (or 1 percent annual chance) floodplain will be elevated with the lowest floor, including the basement, at least two feet above the base flood elevation or meet the design flood elevation standards of ASCE-24 if it results in an elevation higher than two feet above base flood elevation. New housing construction within the floodplain will be built in accordance with the existing local building codes. The existing code is consistent with HUD guidance to ensure all structures, as defined at 44 CFR 59.1, are designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain that receives federal assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the first floor elevation, at least two to three feet above the 1 percent annual base floodplain elevation as determined by best available data. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or flood-proofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or up to at least two (2) to three (3) feet above the 1 percent annual floodplain. Thus, the Territory has put mechanisms in place to ensure all structures requiring elevation go through an in-depth structural analysis to determine whether rehabilitation or reconstruction is the most cost-effective approach to helping homeowners.

Property owners assisted through the recovery program will be required to acquire and maintain flood insurance for the affordability period if their properties are located in a FEMA-designated floodplain. This requirement is mandated to protect the safety of residents and their property and the investment of federal dollars. The elevation height of a house can significantly reduce the cost of flood insurance. The Territory will implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements as a condition of receiving assistance.

7.0. Project Requirements

7.1. Broadband Infrastructures

VIHFA projects that are new construction or substantial rehabilitation of a building with more than four-rental units must include installation of broadband infrastructure, unless:

- The location of the new construction or substantial rehabilitation made installation of broadband infrastructure infeasible;
- The cost of installing broadband infrastructure would result in a fundamental alteration in program activity or cause an undue financial burden; or
- The structure of the housing to be substantially rehabilitated makes the installation of broadband feasible due to the structure being substantially rehabilitated.

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7.2. Acquisition of Real Property

7.2.1 Method of Acquisition

The subrecipient/developer must first determine the method of acquisition for real property. Examples of common types of real property transactions are as follows:

- **Just Compensation Purchase:** The acquisition price is determined through a valuation process by a licensed appraiser. A real estate appraiser provides an objective and unbiased estimate or appraisal of the value of a property. The subrecipient notifies the owner in writing of the property’s fair market value;
- **Negotiated Purchase:** Negotiated purchase is the acquisition of property at a price different from the value that was determined through just compensation. In cases of purchase through negotiation, the reasons for the purchase must be explained in a document called an administrative settlement. For a buyout or acquisition housing program, this may include incentives to resettle beneficiaries. Subrecipient must ensure that the intent of the housing incentive is satisfied at
- **Donation:** A transaction may be considered a donation only if the owner agrees to give, rather than sell, property to the acquiring entity. Donations may be made in either voluntary or involuntary acquisitions.

In all cases and regardless of which proposed funding source will pay for the acquisition price, an appraisal will be used to assess the reasonableness of the acquisition price in the project budget. The applicant shall pay all appraisal costs associated with the project and obtain an appraisal from a certified appraisal company. However, VIHFA, in its sole discretion, may accept an appraisal that is required by another lender and prepared by an independent professional appraiser for that lender. For transactions involving acquisition costs, VIHFA may, as a condition of a reservation, the intended purchaser must confirm that the planned acquisition conforms with acquisition and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this Notice. The acquisition price is defined as the consideration offered for the transfer of title and legal ownership.

For purposes of this section, the acquisition price does not include reasonable and necessary soft costs related to the acquisition, such as legal expenses associated with zoning, title expenses, relocation costs, and engineering fees; or off-site improvements, such as extensions of infrastructure necessary to prepare the site for its intended use, provided that the absence of such improvements is clearly noted and accounted for within the appraisal’s estimate of “as is” value.

For purposes of this section, an Arms-Length Transaction is one between parties made freely and independently of each other, and without a special relationship such as family relationship, other business relationship, or the existence of a controlling interest between the parties. In contrast, a Related Party Transaction includes one between parties where familial, business, controlling interests, or other close ties exist prior to the transaction.

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In general, the acquisition price must meet the following requirements:

- In the case of an Arms-Length Transaction, the acquisition price must be less than or equal to the “as is” appraised value of the property.
- In the case of a transaction involving a change of use, the acquisition price must not exceed the lesser of the “as is” appraised value or the “as completed” appraised value based on the project’s projected end use.
- In the case of a Related Party Transaction where the property was acquired less than two
- (2) years before the application date, the acquisition price must not exceed the lesser of the “as is” appraised value or the applicant’s original acquisition price plus carrying costs acceptable to VIHFA.
- In the case of a Related Party Transaction where the property was acquired two or more years before the application date, the acquisition price does not exceed the “as is” appraised value of the property.
- Any portion of the acquisition price more than the "as is" value may not be financed or reimbursed by CDBG-MIT or other project sources, may not be used in calculating the developer fee, and may not be reimbursed from cost savings at final closing. The excess must be paid with non-project sources such as proceeds of the developer fee.

Exceptions to the acquisition price standards may be submitted to VIHFA on a case-by-case basis. Waivers to the acquisition price limitations will be in VIHFA’s sole discretion, and VIHFA expects the approval of such excess acquisition prices to be extremely limited.

7.2.2 Environmental and Acquisition

Executing a contract to purchase property for a CDBG-MIT project before the environmental review is completed is considered a commitment of funds and a choice limiting action (24 CFR 58.22(a)) and must be avoided until after the environmental review process is completed and the program has issued a release of funds. Any executed instrument, such as an easement document, which conveys an interest in property, whether purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives. There is one action that may be taken before the environmental release of funds that might conclude the acquisition once the environmental review process is completed: an option contract. This type of contract is a useful tool for subrecipient to obtain site control while allowing time to complete the environmental review.

HUD’s regulations at 24 CFR 58.22(d) allow for an option contract agreement for any proposed project site prior to the completion of the environmental review when the following requirements are met:

- Option agreement specifically states it is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- Cost of the option is a nominal portion of the purchase price.

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7.2.3. Acquisition and Other Program Requirements

Procurement: Necessary surveyors, appraisers, title companies, URA vendors and other professionals whose services are required for acquisition and URA compliance must be procured under VIHFA’s rules for procurement.

Environmental Review: Environmental reviews must be completed prior to completion of acquisition activities.

Closing Costs (Buyouts or Acquisition of Real Property): All costs of closing, recordation, including legal fees and costs associated with performing appraisals, surveys, and title reviews may be paid by the Program using CDBG-DR funds.

Release of Funds:

- No CDBG-MIT construction funds will be released until property acquisition is complete (for infrastructure related projects). Environmental reviews must be completed prior to executing a commitment to acquire any property other than through a contract option as described in section 8.2 and at 24 CFR 58.22(d).
- All acquisition activities must be fully documented, completed, executed, and recorded, prior to the execution of any related construction contracts.
- If acquisition is required additional documentation may be required before construction funds may be released.

Subrecipient Agreement Modifications and Amendments: The addition or deletion of acquisition activities to the Subrecipient Agreement must be approved by the Director of Mitigation.

Recordkeeping: The subrecipient is responsible for demonstrating compliance with URA requirements, regardless of who performs the duties. All records and notices and their date of delivery must be maintained locally and in the VIHFA system of record for CDBG-MIT and HUD monitoring purposes.

Documents, as applicable, must be submitted to the Housing Project Manager and retained in the local file. All mailed communications should be “USPS Certified, Return Receipt Requested” or similar, or hand delivered with a notation on a copy by a witness to the delivery. The subrecipient records must contain the complete record and demonstrate compliance.

7.2.3.1. Private to Private Acquisition of Real Property

If an acquisition is a private-to-private acquisition of real property, the URA does not apply. The private development is considered separate; therefore, acquisition by a private entity from another private entity entirely for private use is not considered to be subject to URA. However, if CDBG-MIT funds are invested in public infrastructure to support that private enterprise, any acquisition with respect to that public infrastructure is subject to URA.

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If the private-to-private transfer of property would not have occurred if not for the federal project, then the real property must pass environmental clearance before the acquisition (a Choice Limiting Action) occurs.

7.3. Relocation

It is the program’s goal to minimize the displacement of persons and/or entities involved in or affected by mitigation related activities. To do so, the CDBG-MIT will follow its Residential Anti-displacement and Relocation Assistance Plan (“RARAP”). Subrecipients should consider procuring a Uniform Relocation and Real Property Acquisition specialist to help navigate the relocation of displaced persons.

The Subrecipient will take the following steps and require subrecipients and developers to minimize the direct and indirect displacement of persons from their homes:

- Plan construction activities to allow tenants to remain in their units as long as possible, by rehabilitating empty units or buildings first;
- Where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement; Adopt policies to identify and mitigate displacement resulting from intensive public investment in neighborhoods;
- Adopt tax assessment policies, such as deferred tax payment plans, to reduce impact of increasing property tax assessments on lower income owner-occupants or tenants in revitalizing areas; or
- Target only those properties deemed essential to the need or success of the project. However, if displacement is unavoidable, relocation assistance may be available to those displaced.

The relocation assistance requirements at section 104(d)(2)(A) of the Housing and Community Development Act (HCDA) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by the notice for activities related to disaster recovery.

Relocation assistance may be made available on a case-by-case basis and only as approved by the Deputy Director of Housing. Relocation may be needed for displaced persons. URA assistance is generally required if a person is displaced, is a tenant in good standing, and meets set eligibility criteria such as citizenship, residency at the time of the declared disaster, and more.

7.3.1. Uniform Relocation Assistance

CDBG-MIT funded projects are subject to both the acquisition and relocation requirement of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et seq. (the “URA”), and the federal regulations found in 49 C.F.R. Part 24 (see also section

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104(d) of the Housing and Community Development Act of 1974 and implementing rules at 24 CFR Part 42 regarding relocation assistance policies for HUD funded programs). The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of acquisition, rehabilitation, or demolition of real property for any phase of a federal or federally funded project. The URA also establishes equitable land acquisition policies. See VIHFA Uniform Relocation Assistance and Optional Relocation Assistance Policies and Procedures.

7.4. One For One Unit Replacement *The one-for-one unit replacement requirement*

1. Units that must be replaced

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income dwelling units.

2. Acceptable replacement units

Replacement lower-income dwelling units may be provided by any government agency or private developer and must meet the following requirements:

(a) The units must be located within the recipient's jurisdiction. To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(b) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The recipient may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the recipient has provided the information required under paragraph (3)(g) of this section.

(c) The units must be provided in standard condition. Replacement lower-income dwelling units may include units that have been raised to standard from substandard condition if:

(i) No person was displaced from the unit (see definition of “displaced person” in § 42.305); and

(ii) The unit was vacant for at least 3 months before execution of the agreement between the recipient and the property owner.

(d) The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under paragraph (d) of this section and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.

(e) The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance.

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3. Preliminary information to be made public

Before the **recipient** enters into a contract committing it to provide funds under programs covered by this subpart for any activity that will directly result in the demolition of **lower-income dwelling units** or the conversion of lower-income dwelling units to another use, the recipient must make public, and submit in writing to the HUD field office (or State, in the case of a unit of general local government funded by the State), the following information:

- (a) A description of the proposed assisted activity;
- (b) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
- (c) A time schedule for the commencement and completion of the demolition or conversion;
- (d) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;
- (e) The source of funding and a time schedule for the provision of replacement dwelling units;
- (f) The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
- (g) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs assessment contained in its HUD-approved consolidated plan. A unit of general local government funded by the State that is not required to submit a consolidated plan to HUD must make public information demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

4. Replacement Not Required

- (a) In accordance with 42 U.S.C. 5304(d)(3), the one-for-one replacement requirement of this section does not apply to the extent the HUD field office determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a nondiscriminatory basis within the area.
- (b) The recipient must submit directly to the HUD field office the request for determination that the one-for-one replacement requirement does not apply. Simultaneously with the submission of the request, the recipient must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD additional information supporting or opposing the request.
- (c) A unit of general local government funded by the State must submit the request for determination under this paragraph to the State. Simultaneously with the submission of the request, the unit of general local government must make the submission public and inform

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interested persons that they have 30 days from the date of submission to provide to the State additional information supporting or opposing the request. If the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to the field office.

7.4.1. Alternative Requirement

Grantees may seek alternative requirements when they believe their proposed approach is more effective or efficient in achieving these goals compared to the standard methods outlined in the regulations.

7.5. Affordability Period

The minimum affordability period for rehabilitated or reconstructed housing units are 15 years. While the minimum affordability period for new construction housing units are 20 years. These reviews will occur at different stages, depending on the project’s development funding.

Affordability Period restrictions will be enforced through recorded deed restrictions, covenants, or other similar mechanisms. Other financing sources may impose long-term affordability restrictions, enforceable by Regulatory Agreement or similar binding agreement. The CDBG-MIT Affordability Period may run concurrent to other funding source affordability periods. The Program retains responsibility for monitoring compliance with occupancy requirement throughout the regulatory period.

Non-LIHTC projects will be reviewed and assessed prior to commitment of CDBG-MIT funds, and again at the time of permanent loan closing occurs.

For LIHTC projects that include VI CDBG-MIT commitments, the program will require proof that the reviews have been conducted, as required by Section 42 of the Internal Revenue Code. These supporting documents include:

1. LIHTC Application
2. Reservation Certificate
3. Cost reasonableness analysis
4. Conforming proformas for development and operations consistent with underwriting guidelines
5. Carry Over Allocation
6. Ten percent cost (10%) Certification, and

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7. Final cost certification

8. Form 8609

The CDBG-MIT program offers subrecipients/developers the opportunity to obtain gap financing to construct LIHTC developments. This program strives to utilize prudent underwriting guidelines that reflect analysis of the following credit factors:

- Capacity of the income from the business to service the debt.
- Value and quality of the collateral

A Resale Covenant outlining the resale requirements will be recorded against the property at the time of the original purchase and will remain in place until the control period of Fifteen (15) years has been satisfied.

7.5.1. Monitoring and Enforcement Post Grant Period

As stated in section 7.5., developers/subrecipient cannot be sold for a period of fifteen (15) years. VIHFA’s core housing and construction management staff will continue to monitor multifamily housing projects for compliance and adherence to affordability rules and regulations post CDBG-MIT grant award.

7.5.2. Capacity of the Income from the Business to Service the Debt

Capacity of the income from the business to adequately service the debt is defined as the debt service coverage ratio. The debt service coverage ratio (DSCR), also known as "debt coverage ratio," (DCR) is the ratio of the cash available for debt servicing to interest, principal, and lease payments.

- **Net operating income:** total income minus vacancy and all operating expenses
- **Debt Service:** total amount of interest and principal paid on loans throughout the year.
- **Debt service coverage ratio:** Net operating income divided by the annual debt service.

The primary source of repayment on the loan is documented by a review of the 15-year operating proforma. These reflect expectations for the borrower's performance over a reasonable range of future conditions, rather than overly optimistic or pessimistic projections.

The VIHFA will require a DSCR of 1.15 for the first two years of operation. All projects must be

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underwritten to a minimum debt service coverage ratio (DSCR) of 1.0 – 1.20 in the first year of stabilized operations. Upon review of the economic circumstances, VIHFA may consider the funding of a long-term feasibility reserve capitalized out of limited partner equity proceeds to as a means to meet the DSCR requirement. The DSCR will be calculated including all non-discretionary debt service payments. Project must reflect a 1.0 Debt Coverage Ratio (DCR) for the period of debt service or affordability period (rehabilitation requires fifteen (15) years; reconstruction requires twenty (20) years), whichever is longer

7.6. Recapture

VIHFA adheres to both HUD affordable housing rules and regulations along with those of the Territory regarding recapture provisions; as detailed in the V.I.C Title 21, Chapter 1 and are further defined in the Joint Rules and Regulations for the U.S. Virgin Islands Affordable Housing Program outlined in Title 29, Chapter 16, Sections 930 of the code.

Recapture may come into effect causing an applicant to be required to repay all, or a portion of the funds received. Reasons for recapture include, but are not limited to:

- Providing false or misleading information to the Program;
- Any instance of fraud;
- Withdrawal from the program prior to completion of the project;
- Does not complete construction;
- Non-compliance with the approved scope of work in a manner that would make the home ineligible (e.g., did not comply with lead paint abatement requirements) and/or
- Failure to report the receipt of additional insurance, SBA, FEMA, non-profit assistance, and/or any other duplication of benefits received after the award.
- Voluntary or involuntary relinquishment of ownership in the property prior to successful completion of a final inspection and issuance of a Certificate of Occupancy.

7.7. Evaluation of Project Development Costs: Underwriting

Underwriting involves evaluating key elements of a development or rehabilitations project and assessing for any risk factors. The assessment involves a multi-level review to determine the eligibility and viability of the proposed project to ensure that:

- The project is consistent with the CDBG-MIT Action Plan
- The funding request is feasible
- The developer has the experience and capacity to complete the proposed development
- The developer has the experience in running a housing program such as section 8, LIHTC, etc.
- The costs associated with the development portion of the project are necessarily reasonable, and financially feasible.

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- All sources of project financing are committed;
- To the extent practicable, CDBG-MIT funds are not substituted for non-Federal financial support;
- To the extent practicable, the return on the Developer’s equity investment will not be unreasonably high; and
- To the extent practicable, CDBG-MIT funds are disbursed on a pro-rata basis with other finances obligated to the project.
- The projected operational costs are necessary and reasonable, and the proposed development is sustainable for the duration of the Affordability Period.
- The total amount of government assistance is not more than necessary to produce the project.

Where required, VIHFA will also consider more stringent underwriting requirements imposed by other lenders, equity providers, or the credit enhancer. Requests for use of alternative standards other than those established by VIHFA must be supported by written explanation and appropriate documentation. The use of the VIHFA maximum cost limits or any alternate standards for determining reasonableness of the development costs of the proposed project is at the sole discretion of VIHFA.

If VIHFA determines that the cost of the project as presented is not reasonable using VIHFA's cost standards or the alternative standards at the time of initial application review, the CDBG-MIT award will be reduced by the amount determined unreasonable.

7.7.1. Vacancy Rate

All projects will be underwritten with a minimum vacancy rate of five percent (5%).

7.8. Construction Costs

7.8.1. Construction Hard Costs

VIHFA must be given the opportunity to review the development plans and to comment on the project design. Construction hard costs are the actual costs of constructing or rehabilitating housing. These costs include the following:

1. For new construction projects, costs to meet the new construction standards set forth by VIHFA, to incorporate principles of sustainability, including water and energy efficiency, resilience, which will mitigate the impact of future disasters;
2. For rehabilitation, costs to meet the property standards for rehabilitation standards set forth by VIHFA; as required by HUD, to incorporate principles of sustainability, including water and energy efficiency, resilience, which will mitigate the impact of future disasters, and
3. For both new construction and rehabilitation projects, costs:

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- (i) To demolish existing structures;
 - (ii) To make utility connections including off-site connections from the property line to the adjacent street; and
 - (iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property owned by the project owner, upon which the project is located.
 - (iv) Under 83 FR 5844, all new construction or substantial rehabilitation projects must include installation of broadband infrastructure.
4. (For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing, and which are for the use of the project residents and their guests.
 5. Costs to make utility connections or to make improvements to the project site may be eligible in connection with acquisition of standard housing.

7.8.2. Construction Hard Cost Contingency

Construction hard cost contingencies will be limited to the following:

- All new construction projects shall have a construction hard cost contingency line item of no more than five percent (5%) of total construction hard costs, including general requirements, builder profit and overhead.
- Rehabilitation and adaptive reuse projects may include a hard cost contingency line item not to exceed ten percent (10%) of total hard costs with the proper justification.

7.9. Project Finances

7.9.1. Maximum Rent

Rents for units designated as affordable may not exceed the limits of the most restrictive funding source. Applications that anticipate the use of project-based rental assistance must show a breakdown of the actual rent to be paid by tenants and the estimated rental subsidy that will be received by the project owner. Rents must allow for a reasonable affordability window so that tenants below the maximum income for targeted units are not paying a disproportionate percentage of their income for rent (i.e., more than thirty percent (30%) for general occupancy projects or thirty percent (35%) for elderly projects). For purposes of the CDBG-DR, maximum unit rents (inclusive of tenant paid utilities) may not exceed thirty percent (30%) of the imputed gross income limit applicable to each unit based on an assumption of one and one-half (1.5) persons per bedroom for units with one or more bedrooms and one (1) person per bedroom for efficiency or Single Room Occupancy (SRO) units. For example, the maximum rent calculation

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for a two-bedroom unit targeted to households at forty percent (40%) the area median income would be calculated by dividing forty percent (40%) of the area median income for a three (3) person household by twelve (12) and multiplying by thirty percent (30%). For units restricted to elderly households, the imputed household size may not exceed three (3) persons regardless of the number of bedrooms. For example, in a non-age restricted unit, the rent for a three- bedroom unit would be based on an assumption of a four and one-half (4.5)-person household, but if designated as an elderly unit the maximum rent must be calculated based on a household of three (3) people. Area Median Income charts, including adjustments for household size, are published annually by HUD, and posted by VIHFA. The current charts can be accessed on VIHFA’s website at: www.huduser.gov.

7.9.2. Operating Expenses

Annual operating expenses, including all real estate taxes and replacement reserves, shall be not less than an amount determined to be reasonable and necessary by VIHFA. For projects with funds from the U.S. Department of Agriculture Rural Development (USDARD), the operating expenses will be based upon the current USDARD approved operating budget.

In evaluating the long-term viability of the project, VIHFA requires that operating expenses (including property taxes) must be projected to increase by not less than three percent (3%) annually. The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

7.9.3. Reserves

7.9.3.1. Rent-up Reserves

All project budgets must include provision for deposit of a reasonable amount per unit for rent-up reserve. The amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted and approved. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in-service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

Tax-exempt bond projects may apply for a waiver from this requirement. For those projects receiving RD loan funds, the two percent (2%) initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

7.9.3.2. Replacement Reserves

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All project budgets must include provision for deposit of a certain minimum amount per unit per year in the replacement reserves deposits. All new construction projects must budget replacement reserves of a minimum of \$300 per unit per year. Rehabilitation and adaptive reuse projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project’s operations, escalating by three percent (3%). annually.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project’s physical needs assessment. For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered, and approved by RD.

VIHFA reserves the right, in its sole discretion, to require a capital needs assessment (CNA) prepared by a qualified third party from applicants. Replacement reserve deposits must be adequate to support the project as determined by the CNA. Additionally, VIHFA reserves the right, in its sole discretion, to require a new CNA every five to ten years and adjust the replacement reserves deposits based upon such new assessment, if necessary.

7.9.3.3. Operating Reserves

As part of the development budget, each project (except those receiving loan funds from RD) must establish an operating reserve equal to the greater of a \$1,500 per unit or six months of underwritten operating expenses, debt service payments, and required deposits to reserves. At a minimum, capitalized operating reserves must remain in place at this level until the project has achieved a minimum 1.15 debt service coverage ratio, economic break-even operations for one complete fiscal year as confirmed by the project’s annual audit, and reached and sustained ninety percent (90%) occupancy for twelve (12) consecutive months. In the discretion of VIHFA, the operating reserve may be reduced over the next three (3) years to not less than three months of underwritten operating expenses, debt service payments, and required deposits to reserves provided the project continues to achieve economic break-even operations and sustains ninety percent (90%) occupancy. Upon release, operating reserves generally may be used to pay any outstanding deferred developer’s fee, reduce any CDBG-MIT loan, fund other reserves, fund project betterments, or otherwise be applied as approved by VIHFA. The operating reserve must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made.

7.9.4. Investor Services Fees

Investor services fees must be paid from net cash flow and not be calculated into the minimum

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debt coverage ratio.

8.0. Implementing Processes and Procedures

8.1 Application Process

Subrecipients will have access to the Multifamily Housing Program Application during an open application period which will be announced by publication to the VIHFA media site and website, or via direct selection where VIHFA will invite the particular entity matching the project needs profile to submit a proposal/application.

8.1.1. Application Process and Subrecipient

Applicants will be required to complete a project application and meet all requirements for the Resilient Multifamily Housing Program. Prior to completion, a draft of the application can be reviewed and commented on by program staff if technical assistance is needed. VIHFA will accept electronic submittals and correspond on the application process through electronic means. Therefore, applicants must create a CDBG profile and submit the names, titles and contact details of the following parties. In some cases, an applicant can use the same person.

- Organizational head(s) This person should be able to obligate the entity for total grant award.
- Delegate(s) of Authority with assigned approval privileges.
- Main point of contact along with his/her supervisor's:

Interested Applicant submitting their initial applications must include, but not necessarily be limited to, the following:

- Business Structure Documentation;
- Eligibility Information;
- Duplication of Benefits Information;
- Entity Capacity Information;
- Project Concept Description and Preliminary Project Plan;
- Proposed Financing/Funding Sources;
- Any other items deemed necessary for the initial application submission.

The project concept descriptions will include, but may not be limited to, descriptive details and information on the following:

- Project location and geographic area being served;
- Compliance with National Objective being pursued;
- Background information;
- Stakeholders;

Include at a minimum a conceptual project design document should include:

- Proposed Project type;
- Proposed project financing including proposed non-CDBG financing sources and uses;
- Initial estimated project costs

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- Preliminary Environmental Review considerations;
- Estimated implementation schedule;
- Project beneficiaries;
- Proposed O&M strategy (as applicable);
- How the project addresses a reliability or resiliency need; and
- Any other factors that may be deemed applicable.

Further detail on what is necessary for a complete application is provided in the sections below. A project application must be completed in its entirety to be considered valid. Questions that do not pertain to an applicant CANNOT be left blank and should be populated using “Not Applicable” or “N/A”.

All documentation submitted by the Applicant must be complete and valid at the time of submission and the application itself must be completed by the organization’s head or by an agent that can financially bind the organization for the full award amount. Application will be returned to the Subrecipient should VIHFA deem the application ineligible or require additional detail, attachments, etc. VIHFA will not approve any application that does not meet eligibility or requires additional information.

Note: The signature of the organization head will confirm awareness and agreement with the content in the application.

Applicants must provide support for the dollar amounts entered in the budget section of the application. *Note: A cost/price analysis must be performed to provide a comparison of the bids received to the estimated amount on the ICE to determine cost reasonableness during procurement.*

In reviewing the application, the Multifamily Housing Program staff, in coordination with VIHFA supporting departments and its designated representatives, conducts a thorough review of the initial application submitted by each applicant.

Upon completion of the initial application review, the program will develop and submit to the Deputy Director of Housing and Public Services a Preliminary Application Review Report containing the results of the reviews and recommendations of Applicants and proposed project concepts. Upon Deputy Director approval, the approved application will be forwarded to the Director of Mitigation for approval with final approval routed to the Chief Disaster Recovery Officer.

It is important to note that an approved application does not indicate an approved project. The applicant will receive final Project approval upon successful completion and approval of the environmental review.

8.2 Eligibility Verification

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8.2.1. Project Implementation Plan and Feasibility Analysis

The Project Implementation Plan and Feasibility Analysis must provide details on a variety of factors such as budget limitations and independent cost estimates, current conditions of the project site and or property, controls and communications, design and permitting requirements, technical modeling, project implementation schedule, required improvements to meet project goals, preliminary environmental review, regulatory framework, and any other factor that may affect a project’s feasibility for implementation.

VIHFA reserves the option to fund all, a portion of or none of the project submitted by an applicant.

8.2.2 Capacity Assessment (Risk Analysis)

At the initial approval of the project application, the Capacity Assessment will be triggered. The Compliance and Monitoring Unit will begin the capacity assessment review. The following procedures will occur:

1. *Document Request:* The Compliance and Monitoring Unit will provide the Document Request Checklist and the Capacity Assessment Process Checklist to the program staff to transmit to the applicant of any missing documentation
2. *Assessment Phase:* Once all documentation is received, the compliance and monitoring unit will begin the assessment.
 - Review of Documents- The staff (including monitoring, finance, and procurement staff) will review and analyze all documents for compliance and requirements.
 - Interview- the compliance and monitoring unit will interview applicant/subrecipient staff to ascertain additional information in its assessment.
3. *Assigning Risk Level-* The unit will review scoring in all areas and based on the total will assign a risk level. The Capacity Assessment Summary Worksheet and Scoring will be given to the Compliance and Monitoring Senior Manager for review and approval.
4. *Monitoring Plan and Capacity Assessment Results Letter-* Upon approval by the Compliance and Monitoring Senior Manager, a Capacity Assessment Results Letter will be sent to the Deputy Director of Public Services for inclusion in the award letter. The letter will outline:
 - The risk level
 - Factors for the level
 - Potential Special Conditions in the SRA.
 - Monitoring frequency and type

8.2.3 DOB Calculation and Verification

Funding from other funding sources is verified through applicant provided information. Applicants are required to provide support documentation, including award letters, declined letters and other documentation supporting the amount, sources and uses of funding received for planning or public services efforts related to the 2017 disaster events. VIHFA may contact other funders directly to confirm information submitted by applicants.

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Based upon financial information provided and the sources that they were provided for, the VIHFA will calculate the actual amount that results in a duplication of benefit; if any.

8.2.4. Environmental Review

CDBG-MIT funding is contingent upon compliance with both Territorial and federal environmental regulations. This includes compliance with NEPA and related environmental and historic preservation legislation and executive orders. In general, VIHFA serves as the lead agency for purposes of NEPA. In general, environmental review of projects will consist of the following steps:

- Program provides VIHFA with a project description for review. Project descriptions must be detailed enough so that the scope of the project and its potential environmental impacts are clear.
- VIHFA reviews the project description and categorizes the action regarding the appropriate level of environmental review that must be applied.
- With regard to NEPA, VIHFA will determine whether projects are exempt from environmental review, Categorically Excluded Subject To (Cat Ex(a)), Categorically Exempt Not Subject To (Cat Ex(b)) or require an Environmental Assessment.
- VIHFA issues a general exemption for qualified activities associated with project development that are required to generate project information necessary for environmental reviews, project feasibility assessments, and the creation of funding applications.
- VIHFA or contracted environmental services conduct the appropriate environmental analysis and prepare compliance documentation in support each project, except for qualified exempt activities that fall under the general exemption for project development, in accordance with HUD and NEPA regulations. A Certificate of Exemption, where applicable, will be included in the project file.
- Upon completion of the environmental review of an action that is Categorically Excluded but subject to 24 CFR 58.5 (Cat Ex A) or that requires an Environmental Assessment or Environmental Impact Statement, VIHFA submits a Request for Release of Funds to HUD.
- HUD reviews and approves or denies the Request for Release of Funds. If approved, HUD issues an Authority to Use Grant Funds authorizing the commitment of HUD funds to a particular project.

8.2.5. Pre-Award Costs

According to 2 CFR 200.309; Alternate Requirements and Waivers: FR5989-N-01 (prior notice), FR-6012-N-01, FR-6039-N-01, and HUD Notice CPD-15-07, generally, only allowable costs incurred during the period of performance are to be charged to a federal award. Circumstances under which reimbursement of costs incurred prior to the effective date of the grant agreement with HUD may be charged to the award are detailed below.

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CDBG-MIT pre-award costs incurred the subrecipient are eligible for reimbursement to the extent they would have been allowable after the award, subject to:

- Inclusion in the action plan;
 - Compliance with environmental review requirements
 - The activity for which payment is being made must comply with all other applicable statutory and regulatory provisions, including qualification as a CDBG-MIT assisted activity
- The grantee/sub recipient's may also charge to its CDBG-MIT grant the pre-application costs of homeowners, businesses, and other qualifying entities for eligible costs they have incurred in response to:
- May only charge the costs for rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities and incurred before the owner applies for CDBG-MIT assistance
 - For rehabilitation and reconstruction costs, grantee, subgrantee or the Sub-recipient may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area
 - Costs must be adequately documented
 - The grantee, subgrantee or the Sub-recipient must complete a duplication of benefits check before providing assistance
 - The grantee, subgrantee and the Sub-recipient must ensure that the expenses are necessary expenses; subject to review and approval by the Deputy Director of Housing and Public Services
 - Expenses can only be reimbursed if the individual or entity incurred the expenses within one year after the date on which they applied for CDBG-DR assistance, but a waiver of the one-year term may be granted by HUD on a case-by-case basis.

8.3: Environmental Review

CDBG-MIT funding is contingent upon compliance with both Territorial and federal environmental regulations. This includes compliance with NEPA and related environmental and historic preservation legislation and executive orders. In general, VIHFA serves as the lead agency for purposes of NEPA.

The Program will follow a tiered Environmental Review process that allows for an initial “broad” review of all environmental factors that will be shared by properties in a given geographic area. Based on this broad review, the funds will be released for the program activity contingent upon completing a “site-specific” review once a potential property is identified and determined eligible. Site-specific Environmental Reviews will identify any above-ground hazards, flood plains, historic properties, and noise issues when applicable.

A site-specific Tier II must be completed for each property prior to project bidding or taking any choice-limiting actions on the proposed project site. Site-specific Tier II reviews will identify any above-ground hazards, flood plains, and historic properties, if applicable. In general, environmental review of projects will consist of the following steps:

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- Program provides VIHFA with a project description for review. Project descriptions must be detailed enough so that the scope of the project and its potential environmental impacts are clear.
- VIHFA reviews the project description and categorizes the action regarding the appropriate level of environmental review that must be applied.
- With regard to NEPA, VIHFA will determine whether projects are exempt from environmental review, Categorically Excluded Subject To (Cat Ex(a)), Categorically Exempt Not Subject To (Cat Ex(b)) or require an Environmental Assessment. VIHFA issues a general exemption for qualified activities associated with project development that are required to generate project information necessary for environmental reviews, project feasibility assessments, and the creation of funding applications.
- VIHFA or contracted environmental services conduct the appropriate environmental analysis and prepare compliance documentation in support each project, except for qualified exempt activities that fall under the general exemption for project development, in accordance with HUD and NEPA regulations.
- A Certificate of Exemption, where applicable, will be included in the project file.
- Upon completion of the environmental review of an action that is Categorically Excluded but subject to 24 CFR 58.5 (Cat Ex A) or that requires an Environmental Assessment or Environmental Impact Statement, VIHFA submits a Request for Release of Funds to HUD.
- HUD reviews and approves or denies the Request for Release of Funds.
- If approved, HUD issues an Authority to Use Grant Funds authorizing the commitment of HUD funds to a particular project.

8.4. Application Acceptance/Denial Notices

VIHFA will inform applicants of applications deemed ineligible or require additional detail, attachments, etc. VIHFA will not execute or date any application that does not meet eligibility or requires additional information. Where possible, VIHFA will work with applicants for resubmittal. Otherwise, VIHFA will issue a denial letter. Final project approval is contingent upon favorable environmental review.

8.5. Administrative Withdrawals

Applicants may be administratively withdrawn for multiple reasons; the following are several example scenarios:

- An applicant repeatedly fails to provide documentation that is required to complete their application.
- The program confirms that an application is a duplication of other valid applications or results in an overlap of other program funds.
- An applicant violates the statement, ***“Warning: Any person who knowingly makes a false***

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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” by providing false or misleading information.

8.6. Appeals/Reconsiderations

If an Adverse Eligibility Notice is sent, the Applicant has the right to file a Program-based reconsideration request and/or Administration Review of the determination if he/she believes an error has occurred, as provided herein. The notice will provide instructions for submitting a reconsideration/administrative review request. All appeals under this Program will follow the CDGB-MIT Appeals policies and procedures.

8.7. Agreements

Subrecipients and developers will enter into agreements with VIHFA once project approval has been received.

8.7.1 Subrecipient Agreements

VIHFA will enter into a Subrecipient Agreement (SRA) with the Applicant constituting a conditional commitment of funds. These agreements define financial and development management requirements as well as remedies to correct deficient or non-compliant projects. The agreement also contains recapture provisions for non-performance or breach of Applicant responsibility on any requirements, including adherence with CDBG-MIT rules and regulations.

- The SRA contains, but not be limited to, the following:
- A description of the Subrecipient’s program implementation responsibilities;
- The amount and terms of the funding;
- The amount of Activity Delivery Costs per project;
- Provisions governing the project work;
- Terms and conditions required by federal or state law;
- The approved schedule of the program;
- The approved program budget;
- Manner, timing, and conditions for disbursement of project funds;
- Reporting and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular records and the timeline for maintaining them in order to assist VIHFA in meeting HUD’s recordkeeping and reporting requirements.
- Attribution of the project to VIHFA and HUD in materials and publications;
- Terms and conditions for the monitoring of the project in order to verify compliance with the requirements of the program;
- Provisions regarding the recapture of funds; and
- Other provisions necessary to ensure compliance with the requirements of the Community Resilience Wraparound Public Services Program. VIHFA provides these documents to

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the awardee for signature. The documents are returned to VIHFA to execute the Agreement approval process.

Please note: It can take multiple months to process an Agreement with the state. This time can be reduced by promptly responding and providing complete requisite documentation.

All agreements must include: “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. 372.”

8.7.2. Developer/Loan Agreements

The Developer must meet certain requirements to enter into a binding Agreement with VIHFA CDBG-MIT. The following certificates must be submitted for the Agreement to be considered complete:

- Certificate of Filing of the Developer’s Income Tax Returns for the past two (2) years
- Certificate of Filing of the Debt stating its tax status with Virgin Islands Internal Revenue Bureau of Good Standing or Authorization to Do Business in the Virgin Islands.

If any of the above certifications are incorrect for any cause attributable to the Developer, VIHFA shall have just cause for terminating the Agreement immediately. The following documentation must be received and accepted by VIHFA prior to the execution of the Agreement:

- a) As it pertains to construction, the following will have been received: Approved Plans by all pertinent Governmental Authorities with the improvements as shown by the Plans in compliance with all applicable zoning and construction laws, ordinances, and regulations.
- b) A Construction Contract that satisfactorily provides for the construction of the Improvements;
- c) Evidence that all roads and utilities necessary for the full utilization of the Improvements for their intended purposes have been completed or are contemplated within the Improvements or the presently installed and proposed roads and utilities are sufficient for the full utilization of the Improvements for their intended purpose; and
- d) That the construction of the Improvements theretofore performed, if any, was performed in accordance with the Plans and will be finished along with all necessary roads and utilities on or before the Construction Completion Date.
- e) Financial Statements for the prior two years of the Developer, and/or Owner, and any other

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financial documents and/or data deemed reasonably required by VIHFA CDBG- MIT;

- f) Evidence of payment and performance bonds and labor and materials payment bonds, each for penal sums equal to the amount of the Construction Contract, each naming VIHFA CDBG-MIT and VIHFA as co-obligees, with a company having a rating of A or better and a financial size of V or better with Best Rating Service and acceptable to VIHFA CDBG-MIT, the Workmen’s Compensation Fund and other insurance policies (together with evidence of the payment of premiums) required hereunder and/or under any other Loan Document:
- g) Copy of the Construction Contract and a copy of the Developer's agreement with the Developer's Architect certified by the Developer;
- h) The Project Cost Statement / Development Proforma;
- i) The terms and conditions of such agreements must be acceptable to VIHFA CDBG-MIT.
- j) A copy of the public instrument (deed, lease agreement, sales contract, option agreement, among others) relating to the Developer's acquisition of the Developer's Interest in the Premises and all documents related therewith;
- k) The Developer must provide evidence that it has met all conditions defined in its LIHTC-Operating Agreement as of the date of the Initial Advance with respect to ensuring that the Capital Contributions have been compiled with to the extent possible (as applicable);
- l) Environmental Review, which includes the Approved Request for Release of Funds (RROF) and Finding of No Significant Impact (FONSI), if applicable.
- m) Copies of any inspection and/or test records and reports made by or for the Developer’s Architects;
- n) A construction schedule for the Improvements;
- o) A progress schedule showing the interval of time over which each item of Direct Cost and Indirect Cost is projected to be incurred and paid, as well as a breakdown of all Direct Costs to be incurred for the construction of the Improvements; and
- p) Evidence of compliance with CDBG-MIT funding requirements, including but not limited to, adherence to the inclusion of Broadband Infrastructure requirements.
- q) The following items must be received and reviewed by VIHFA CDBG-DR's Legal Counsel prior to the execution of the CDBG-MIT Agreement:

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- The Loan Documents and any other document reasonably required by VIHFA CDBG- DR;
 - Evidence of payment for a Title Insurance policy;
 - Evidence that all taxes and other levies imposed upon the Premises or on the Developer’s Interest in the Premises and/or improvements are fully paid and current;
 - Copies of all applicable authorizations as determined by VIHFA CDBG-DR or VIHFA CDBG-DR’s Counsel (on behalf of VI HFA CDBG-DR):
 - i. Plot plan and subdivision approvals;
 - ii. Zoning variances;
 - iii. Sewer, building, flood, and all permits required for construction, use, occupancy, and operation of Premises;
- r) Agreements from Developer's Architects and the Contractors, including but not limited to, design agreement(s), construction contract agreement(s);
- s) A survey of the Premises certified by a civil engineer or surveyor acceptable to VIHFA CDBG-DR and the Title Insurer showing:
- i. The paid title insurance policy must be equal to the Mortgage and issued by the Title Insurer. The Title Insurer shall insure the Mortgage to be a valid First or Second lien on the Mortgaged Property free and clear of all defects, liens, claims and encumbrances and shall contain reference to a survey.
 - ii. The location of the perimeter of the Premises by courses and distances;
 - iii. All easements, rights-of-way, and utility lines referred to in the title policy required by the agreement or which i. or cross the Premises;
 - iv. The lines of the streets abutting the Premises and the width thereof, and any established building lines;
 - v. Encroachments and the extent thereof upon the Premises;
 - vi. The Improvements to the extent constructed, and the relationship of the Improvements by distances to the perimeter of the Premises, established building lines and street lines; and

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vii. If the Premises are described as being on a field map, a legend relating the survey to said map;

t) A copy of the operating agreement of the Developer, as amended, and a copy of the organization documents of the Managing Member of the Developer, and the appropriate legal authorizations of Developer issued by the Virgin Islands Government and/or the state of incorporation (to the extent required); and

u) An opinion of the Developer's counsel covering, among other matters, the organization and existence of the Developer, the power of the Developer to enter into the Loan Documents and to perform all transactions contemplated by the agreements referred to therein, and the due execution, validity, and enforceability of the Loan Documents, Note(s), Security Agreement and all other documents and instruments pertaining to the Loan.

It is the responsibility of the Developer to ensure that the applicable Building Codes are applied, and permits obtained through the Department of Planning and Natural Resources.

The agreements and legal documents with the developer or contractor, will include all the performance and compliance requirements for each project, including but not limited to:

- Project budget,
- Development and operating pro forma covering the affordability period fifteen (15) years for rehabilitation; twenty (20) years for new construction),
- Project description, number of units, unit type, design, construction standards,
- Unit breakdown,
- Rent schedule,
- Affordability requirements,
- Lease requirements,
- Tenant selection criteria,
- Compliance with Territory and local tenant-landlord laws,
- Conditions for faith-based organizations,
- Lead-Based Paint requirements,
- Fair housing and equal opportunity provisions,
- Fund disbursement,
- Record keeping and reporting provisions,
- Enforcement provisions,
- Procedures for securing rent increases,
- Debarment checks,
- Federal Financial Accountability and Transparency Act reporting
- Procedures for requesting withdrawal from reserves, and
- Compliance requirements, including the monitoring checklist that will be used, and building procured.

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8.7.3 Contractor or Other Parties Agreements

All contracts are required to contain the following provisions, pursuant to 2 CFR Part 200:

- Period of performance;
- Milestones or deliverables; and
- Liquidated damages.

Contractor or other parties agreements should include the clause: “Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729”

8.7.4 Subrogation Agreement

Subrogation is a legal doctrine that allows one person to take on the rights of another. All subrecipients/applicants must enter into a subrogation agreement in which VIHFA obtains the right to collect any additional payouts the participant/subrecipient receives for the same purpose after the participant/subrecipient has entered into an agreement for CDBG-MIT funding benefits. All duplicative funding received must be remitted to or accounted for by the program, regardless of when it is received by the entity. If an entity receives additional funding for the same purpose as the award, including after the award is executed or services are completed, the entity is required to report the additional funding to the program. By accepting the award, subrecipients agree that they will report any duplicative funds to the program whenever received.

Upon receipt of a report that additional benefits have been received, the program will recalculate the entity’s award and provide instructions as to whether the award will be reduced by such amount, or whether the entity must remit such amounts to the program as reimbursement (when additional assistance received after program disbursements). Each subrecipient will execute and be bound by a subrogation agreement. Subrecipients must agree to subrogate any future payments they may receive after award from any sources that represent a potential DOB. The subrogation agreement requires the applicant to notify VIHFA if additional funds are received and to assist VIHFA in collecting any amounts owed to it from these sources. All parties shall comply with standard anti-fraud measures. VIHFA will exercise all normal due diligence in collection of amounts owed through contact with awardees and will pursue investigation and collection efforts which may include demand letters, small claims court, filing of judgments, and/or other collection activity. Collection activity following demand letters will be determined in consultation with VIHFA Legal Counsel and/or the US Virgin Islands Attorney General’s Office.

9.0. Program Administration

9.1. VIHFA Role and Responsibilities

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The VIHFA Resilient Multifamily Housing Program staff will administer and oversee all activities and expenditures in connection with the Virgin Islands CDBG-MIT funds. VIHFA employees, along with contractors procured to aid VIHFA staff, will ensure that the activities are undertaken to meet all program requirements, including the disaster threshold, eligibility, national objective, compliance, fair housing, labor standards, nondiscrimination, environmental regulations, and procurement regulations.

VIHFA will monitor all activities in accordance with HUD, VI CDBG-MIT, and VIHFA monitoring and compliance requirements so that each activity funded will meet the disaster threshold and one of HUD’s national objectives, with emphasis on eligible activities achieving the new construction of affordable housing units primarily benefiting low to moderate-income persons.

9.1.1. Technical Assistance

Subrecipients and developers will be provided Technical Assistance throughout the implementation process, including through project initial rent-up. Technical Assistance sessions may include:

- Review of the project description, recovery rationale, budget including source and use of funds and operating budget for review.
- Discussion of VIHFA staff review project readiness and alignment with program policies and priorities.
- CDBG-DR program eligibility requirements, including “tie-back” to the storm and green building requirements
- Cross-cutting federal requirements for compliance with Davis-Bacon, Uniform Relocation Act (URA), Section 3, Fair Housing. These requirements are described in further detail later in this policy manual.

9.2 Subrecipient Management Responsibilities

Subrecipients have the following responsibilities and must:

- Demonstrate how the proposed project meets one or more of the national objectives;
- Comply with all terms and conditions of the subrecipient agreement, program guidelines, Mitigation Action Plan and applicable federal, state and local laws;
- Develop policies and procedures to detect and prevent fraud, waste and abuse that describe how the subrecipient will verify the accuracy of information and report instances of suspected fraud, waste or abuse;
- Follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486;
- Develop policies and procedures for complaints and grievances and for appeals. These policies and procedures must be made available to participants and beneficiaries (if

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applicable);

- Update application or program policies and procedures upon VIHFA request;
- Document all complaints, grievances and appeals received. To comply with HUD requirements, a response to each complaint, grievance or appeal must be made within 15 working days of receipt; Maintain organized files and make them accessible to VIHFA or its representatives upon request;
- Maintain books, records and documents relating to the project in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by VIHFA under this program. All records must be maintained for five years beyond the closeout of the grant;
- Retain sufficient records to document program activities, participants, and services and to demonstrate compliance with the CDBG-MIT Infrastructure and Public Facilities Program Guidelines as well as the Multifamily Housing Program Guidelines, subrecipient agreement and applicable federal, state and local laws and regulations. All records must be maintained for five years beyond the closeout of the grant;
- Ensure that any partners, subcontractors, vendors or other entities to whom the subrecipient intends to disburse CDBG-MIT funds are not listed as excluded, debarred, or 16 suspended on the System for Award Management (<https://sam.gov/SAM/>), including affiliated businesses with the same EIN;
- Comply with the requirement that subrecipients will not carry out any of the activities under their agreement with VIHFA in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974;
- Provide a detailed timeline for implementation consistent with the milestones outlined in these Program Guidelines and subrecipient agreement and report actual progress against the projected progress on a monthly basis;
- Provide a quarterly report to VIHFA that outlines the activities completed in the previous quarter.
 - The report must include financial metrics that demonstrate the implementation costs date with projected spending.
 - Report must also include performance measures met, beneficiary information, Section hours and qualitative efforts, and as well as a qualitative narrative of overall progress.
 - Reporting must include documentation of the number of complaints received, the nature of the complaint, and that complaint was responded to within 15 days of receipt. Additional quarterly reporting requirements may be required, depending on the specific program design implemented by a subrecipient.
- Provide a monthly report to VHFA that details program outcomes, activities, and the grant funding approved versus funding disbursed;
- Monitor compliance with the terms and conditions of the subrecipient agreement; and
- Maintain organized files and make them accessible to VIHFA or its representatives upon request.

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9.3. COMPLIANCE AND MONITORING

9.3.1. VIHFA Compliance and Monitoring

VIHFA is responsible for all oversight and compliance for all activities funded with CDBG- MIT, regardless of the entity undertaking the implementation of the activity. VIHFA has compliance responsibilities throughout the term of the HUD grant through closeout, and for long-term compliance of the Subrecipient/Developer projects throughout each project’s Affordability Period.

VIHFA must ensure compliance with applicable regulations, which include but are not limited to: record keeping, overall administration, financial management, environmental compliance, citizen participation, conflict of interest, procurement, Davis-Bacon Labor Standards, housing qualify standards, affordability period compliance, production outcomes, written agreement milestones and requirements, cost allocability, cost allowability, duplication of benefit, civil rights regulations (Minority and Women’s Business Enterprise, Section 3, Fair Housing, Limited English Proficiency, and American with Disabilities Act), property acquisition and management, displacement, relocation, requirements for properties located in a special flood hazard area, and unit replacement.

The CDBG-MIT Program has established a Monitoring Plan to ensure that all programs and projects comply with applicable federal, Territory, and local regulations and effectively fulfills the goals set forth in the Action Plan and the Action Plan Amendments.

The Monitoring Plan serves to identify risks, deficiencies, and remedies relating to VIHFA directly administered programs, administrative and financial management, and programs administered via VIHFA subrecipients/developers. The Monitoring Plan seeks to accomplish the following objectives:

1. Determine if a subrecipient is carrying out its obligations, and its activities as described in the Action Plan for CDBG-MIT assistance and its related grant or subrecipient agreement.
2. Determine if a subrecipient is carrying out its activities in a timely manner, in accordance with the schedule included in the subrecipient agreement.
3. Determine if a subrecipient is charging costs to the project that are eligible under applicable laws and CDBG-MIT requirements, and reasonable considering the services or products delivered.
4. Determine if a subrecipient is conducting its activities with adequate control over program and financial performance, and in a way that minimizes opportunities for waste, mismanagement, fraud, and abuse.
5. Assess if the subrecipient has a continuing capacity to carry out the approved project, as well as future grants for which it may apply.
6. Identify potential problem areas and to assist the subrecipients in complying with applicable laws and regulations.
7. Assist subrecipients in resolving compliance problems through discussion, negotiation, and

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- technical assistance (TA) and training.
8. Provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected by grantee/subrecipients, and not repeated.
 9. Comply with the federal monitoring requirements of 24 CFR 570.501(b) and with 2 CFR 200, as applicable.
 10. Determine if any conflicts of interest exist in the operation of the CDBG-DR program per 24 CFR 570.611.

Applicants will be required to conduct long term compliance reviews on the units with reports submitted to VIHFA CDBG-MIT. These reviews will include, but not be limited to documentation covering:

- Evidence that required records are maintained to demonstrate compliance with applicable regulations.
- Annual rent rolls and income certifications for all tenants in affordable units.
- Annual inspection reports for HQS requirements of all units.

9.3.2. Lease Compliance and Monitoring

The executed subrecipient and/or grant agreement defines the number of affordable housing units that must be included in the project. The Developer and any subsequent project owners must ensure that all tenants of the affordable housing units, both at initial lease up and throughout the project’s Affordability Period, meet income and other eligibility requirements.

Property owners or management firms will report project compliance at initial lease up and on an annual basis for a minimum term of the Affordability Period. Reporting will be submitted to the agency that executed the agreement. The Subrecipient/Developer will report project compliance to VIHFA for any Public and Affordable Housing projects where they implemented the CDBG-MIT activity. VIHFA Housing and Compliance and Monitoring managers will confirm that each project has leased the number of affordable housing units required in the executed grant agreement to LMI households throughout the Affordability Period.

Project owners of projects where VIHFA implemented the CDBG-MIT activity will be required to report project compliance at initial lease up and on an annual basis for a minimum term of the Affordability Period.

Compliance monitoring of initial project rent-up monitoring will include but is not limited to the review of tenant eligibility and income documentation, rent rolls, project budgets and financial records.

10.0. Project Funding and Disbursement

CDBG-DR funds may be available at either Grant or Permanent Loan closing, in which not only CDBG-DR, but all funds needed to complete the project will be documented as available. Closing

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may not take place until title clearance has been obtained. Any required flood and other applicable insurance will be confirmed at the closing.

Each development project will be registered as a separate activity in HUD’s Disaster Recovery Grant Reporting System (DRGR) and CDBG-MIT funds will be drawn down accordingly. All expenses for which reimbursement is being sought must be provided, as required by VIHFA’s financial management policies. Acceptable documentation includes but is not limited to invoices, receipts, evidence of payment (if appropriate), engineer/architect cost certification, as well as other items, such as inspection reports, based on the expense.

10.1. Timely Expenditure of Funds

As per the Appropriations Act (P.L. 115-123), CDBG-MIT funds must be obligated as stated in the MOU or Subrecipient Agreement with VIHFA. In all cases, funds must be disbursed by the year 2035 – twelve (12) years of the signing of the initial Grant Agreement between HUD and VIHFA for CDBG-MIT and by the year 2029 – six (6) years of signing of the initial Grant Agreement between HUD and VIHFA for CDBG-MIT

10.2. Activity Delivery Costs

All proposed subrecipient project delivery costs must be determined to be eligible and reasonable during the project detailed scope and budget review process. Costs must be directly related to carrying out the funded activity.

10.3. Program Income

All collection of payments for CDBG-MIT funds disbursed as interim loans shall be considered Program Income and maintained by VIHFA CDBG-MIT under the direction of VIHFA. These are to include loan payments – inclusive of principal and interest – from the Developer, as well as any loan or grant repayments because of program noncompliance. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, in accordance with 83 FR 5844. VIHFA CDBG-MIT will establish an independent, no-interest-bearing account for program income received from the Program. Program income activity shall be reported to the VIHFA CDBG-MIT Financial Division. Program income does not include any operating income generated by the project after any loans funded through CDBG-MIT funds are repaid, and the Project is occupied.

VIHFA can expend up to 5 percent of the total program income received for administration. As allowed by HUD, no more than 15 percent of the program income can be used for planning and technical assistance activities.

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10.3.1. Pro-Rating Program Income

When program income is generated by an activity that is only partially assisted by CDBG-MIT funds, the program income shall be pro-rated to reflect the percentage of CDBG-MIT funds used (24 CFR Part 570.489(e) (1) (ix)). For example, if a parcel of land were purchased with 50 percent CDBG-MIT funds and 50 percent other funds, 50 percent of any program income from the sale or long-term lease of that property would be considered CDBG-MIT program income subject to CDBG-MIT rules and requirements.

10.4. Procurement

Federal, state, and local/territorial procurement rules apply when purchasing services, supplies, materials, or equipment. VIHFA and all subrecipients must abide by the procurement process mandated by federal and state government codes as they are applicable to Multifamily Housing. The procurement process includes the decision to purchase as well as the process to complete the purchase. The federal government has established a set of procurement rules in 2 CFR Part 200 that apply to CDBG-MIT projects to include the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services. 24 CFR 570.502 requires compliance with 2 CFR Part 200 for CDBG-MIT projects, with certain limited exemptions (see also 24 CFR 85.36 and 24 CFR 84.40-48, as applicable as related to nonprofits). These rules are in place to ensure that federal dollars are spent fairly and encourage open competition for the best level of service and price. If a conflict between federal and local procurement regulations should occur, more stringent regulations will be followed.

All procurements under this Program must be submitted to the CDBG-MIT procurement division. All procurements shall be processed in accordance with the VIHFA Procurement Policies and Procedures, as well as 2 C.F.R. §§200.317 and 318. Subrecipients and developers will solicit licensed contractors to construct homes/multifamily properties and install infrastructure utilizing CDBG-MIT funding.

All procurement-related contractor qualifications are outlined in the VIHFA Procurement Policies and Procedures. If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination

11.0 Cross-Cutting Requirements

This Program will be designed and implemented in compliance with all applicable cross-cutting federal regulations as outlined in the following sections. Subrecipients and Developers are subject to the Cross-Cutting Federal Requirements described herein. These include compliance with the Uniform Relocation Act, Davis-Bacon and Related Acts, Minority- and Women-Owned Business

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Enterprises contracting provisions, Section 3, Fair Housing, Equal Employment Opportunity, and environmental requirements of the National Environmental Protection Act.

11.1. Tenant Protection Under Uniform Relocation Act (URA)

Subrecipients must ensure that the Uniform Relocation Act requirements have been followed and that both displaced occupants and any current occupants of the project are identified. These occupants are entitled to advisory services, in the form of notices and counseling, moving and/or storage expenses, and coverage of all displacement costs for temporary or permanent relocation pursuant to formula and applicable Federal Register notices. The program will monitor displaced and current tenants and maintain records from the inception of the project. Failure to do so can lead to unexpected and substantial costs and work later. Full details for CDBG-DR URA Policy are in the VIHFA General Administration Manual.

11.2. Fair Housing

Development Partners are subject to VIHFA’s Affirmative Fair Marketing requirements and will be required to provide a marketing plan and report on compliance in accordance with the VIHFA’s policy. The Affirmative Marketing Plan must follow applicable Fair Housing laws and demonstrate how the applicant will affirmatively further fair housing.

11.2.1. Affirmative Further Fair Housing Requirements

Affordable multi-family housing development and preservation efforts undertaken by subrecipients, or developers are required to affirmatively further fair housing through consideration of the following efforts:

- Outreach and communication efforts to encourage meaningful engagement of members of protected classes and vulnerable populations in the planning and development process;
- Providing marketing and outreach efforts that reduce barriers to the provision of services, including materials reflective of the Territory’s diverse population, documents translated into Spanish and Creole, targeting outreach and marketing to Racially and Ethnically Concentrated Areas of Poverty (RECAPs) or other historically underserved areas;
- Design and implement equitable policies and procedures for the rental or sale of any funded properties (subrecipients and developers are required to provide tenant selection policies);
- Provide reports demonstrating the provision of assistance to diverse populations (subrecipients/developers must gather race and ethnicity data for all beneficiaries); and legally sufficient justification for any practice that may predictably result in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin;

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- Demonstrate the activity will not have an unjustified discriminatory effect on or failure to benefit racial and ethnic minorities in proportion to their community needs, particularly in racially and ethnically concentrated areas of poverty;

11.3. Section 504

Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq. prohibits discrimination. The Act requires that any alterations of multifamily (5+ units) rental projects, a minimum of 5 percent (5%) of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional two percent (2%) of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e., hearing or vision impairments).

In buildings with five (5) or more dwelling units and at least one elevator, all dwelling units and all public/common use areas are subject to Section 504 requirements. In buildings with five (5) or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to Section 504 requirements.

For new construction, Section 504 applies only to Projects that include 5 or more units. Projects with five (5) or more units must be designed and constructed to be readily “accessible” to and usable by persons with disabilities (including the common areas). “Accessible,” when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered, or adapted can be approached, entered, and used by individuals with physical handicaps.

A fifteen (15) or more units Project, with rehabilitation costs that are seventy-five percent (75%) or more of the replacement cost of the completed facility, is considered substantial rehabilitation. In this case, a minimum of five percent (5) of the dwelling units in the Project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional two percent (2%), at a minimum (but not less than one unit), must be accessible to individuals with sensory impairments.

11.4. Davis-Bacon and Related Acts

Prevailing wage rates and compliance requirements will apply to all developments with eight (8) or more units where more than \$2,000 CDBG-DR funds are expended on construction. DBRA requires the payment of locally prevailing wages and fringe benefits to laborers and mechanics for on-site construction, alteration, or repair (including painting and decorating) of public buildings or public works on federally funded or assisted contracts more than \$2,000. See Federal Requirements, which includes Federal Labor Standards Provisions. All Development Partners must account for prevailing wage in their Project Proposal. Locally prevailing wages are

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determined for specific employee classifications by the US Department of Labor (DOL) and made available to the public as “wage decisions”.

11.5. Minority-and Women-Owned Businesses (WMBEs)

All Development Partners are required to comply with Article 15-A of the Executive Law, which promotes the participation of minority- and women-owned businesses (MWBEs) in contracting opportunities.

11.6. Section 3

Awardee shall comply with 12 U.S.C. 1701u and its regulations (“Section 3”). In compliance with Section 3, the CDBG-MIT Program will require Subrecipients to establish training, employment, contracting and other economic opportunities arising from HUD funding. The requirements of Section 3 apply to recipients of HUD funding for Section 3 covered project(s) in which the amount of the assistance is more than \$200,000. Contractors and Subcontractors are also subject to Section 3’s requirements when performing any type of activity on Section 3 covered projects for which the amount of funding is more than \$200,000 and the contract or subcontract exceeds \$100,000.

If these thresholds are met, the Section 3 requirements apply to the entire project or activity that is funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered funds.

If a Subrecipient receives Section 3 covered housing construction or infrastructure or economic revitalization assistance more than \$200,000, but no individual contract exceeds \$100,000, Section 3 requirements will only apply to the recipient (e.g., hiring and training goals).

11.7. Limited English Proficiency (LEP)

Federal Executive Order 131661 and Final Guidance (72 FR 2732) require VIHFA and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded whole or in part with CDBG-MIT financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP).

Compliance with this requirement is detailed in VIHFA’s Language Action Plan (LAP) and must be adhered to. It is VIHFA’s policy to provide language access services to LEP individuals needing access to CDBG-MIT funded programs; to manage and train VIHFA staff, contractors and subrecipients on procedures for implementing the LAP; to inform LEP individuals that language access services are available; and to continuously monitor and evaluate the implementation of the LAP. Subrecipients will be responsible for providing reasonable accommodations to ensure equal opportunities are made available in the training programs for

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both LEP individuals and businesses.

12.0. CONSTRUCTION ADMINISTRATION

The Program is responsible for monitoring the quality, completeness, and conformity to specifications of all work performed by third-party contractors. The Program has adopted the U.S. Virgin Islands building code based on the International Residential Code; the Department of Planning and Natural Resources Construction Information for a Stronger Home Guide; VIHFA's Affordable Housing Guidelines; the Model Energy Code and the HUD Community Planning and Development Green Building Retrofit Checklist.

Contractors must have the ability to manage and coordinate the types of activities required in the development of single-family housing. Contractor or developers responsibilities will include but not be limited to the following:

- Preparing plans and specifications (or work write-ups) that conform to program construction standards Permits, fees, mobilization, site utilities, site security, builder’s risk insurance, homebuyer warranty, etc.
 - Site Plans, fencing, landscaping, or other site improvements being provided
 - Working drawings and materials specifications
- Estimating construction costs
 - Cost estimates for construction of new structures based on take-offs from the working drawings of the quantities of materials and labor required or compilations of costs for similar and recently built or renovated structures
- Managing contract awards and construction process
- The Contractor assumes all risks of cost overruns in excess of the construction and contingency budget line item in the previously approved Project Budget unless the Program approves a revised Project Budget.

12.1. Cost Reasonableness

A project is considered cost-reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally funded. *See: 2 CFR 200.404*

12.2. Bonding Requirements

The standards under this Section apply to construction contracts that exceed \$500,000.00. There are no bonding requirements for small purchases or competitive proposals. The Program may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

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For construction and facility improvement contracts exceeding \$500,000 the Contractor/Subcontractor must comply with, at minimum:

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

12.3. Bid Requirements

For construction contracts exceeding \$750,000.00, bidders shall be required to submit a bid guarantee equivalent to 5% of the bid price.

12.4. Performance and Payment Bonds

For construction contracts exceeding \$500,000.00, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following:

1. A performance and payment bond in a penal sum of 100% of the contract price; or
2. Separate performance and payment bonds, each for 50% or more of the contract price; or
3. A 20% cash escrow; or
4. A 25% irrevocable letter of credit.
5. A pledged asset(s) that is adequate to protect the federal interest.

12.5. Surety Bonds

These bonds must be obtained from guarantee or surety companies authorized to do business in the Territory where the work is to be performed. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the State/Territories in which the company is licensed to do business. The use of companies in this circular is mandatory.

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12.6. Insurance Requirements

Contractors/Subcontractors must maintain liability insurance for protection against claims for damages because of bodily injury or death, claims for damages, to property which may arise out of or result from the Contractor’s c under a contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them. This amount shall be in the amount as determined by the VIHFA’s Procurement Policy. Contractor shall present the Agency with a certificate of such insurance. Additionally, Contractor is required to carry Workers’ Compensation insurance.

Property owners are required for carrying enough physical and liability insurance coverage to fully protect the CDBG-DR program asset throughout the period of affordability or loan, whichever is longer, with VIHFA listed as a lienholder on all policies. When the project is placed into service, hazard insurance coverage for the whole property with replacement cost coverage, including all buildings, project contents and revenues during the affordability period or loan, whichever is longer.

12.7. Subcontractor Clearance

The program does not clear subcontractors. The program and its subgrantees are required to make prime contractors aware that it is their responsibility to verify subcontractor eligibility based on factors such as those listed in Section 1 of this Article. The prime contractor must also use the website: <https://www.sam.gov> to determine if a subcontractor has been debarred at the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the program urges prime contractors to closely scrutinize subcontractors. If a contractor or subcontractor is found to be ineligible after the award of a contract, the contract must be immediately terminated, and the matter reported to the program.

13.0. Construction Process and Oversight
13.1 Mandatory Pre-Construction Meeting

The VIHFA pre-construction meeting may be held once the construction contract is executed and prior to commencement of work. The purpose of this meeting is to go through all federal and territorial regulations with the contractor, including Section 3 and the Labor Standards Provisions. In this meeting, VIHFA personnel and the proper subgrantee staff will outline these standards' expectations as well as how they will be implemented and monitored. The subrecipient and/or their representative, as well as the prime contractor, must be present. VIHFA will facilitate this meeting. To ensure that all Subcontractors are aware of their need to abide by federal labor laws and civil rights regulations, the subrecipient and prime contractor should include all Subcontractors in their communication. These guidelines will also involve a review of the following.

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Construction Reviews Sample List

Project Schedules	Technical job requirements
<ul style="list-style-type: none"> • Change Orders • Project Meetings • Payment Process • Construction Close Outs • Site Visits 	<ul style="list-style-type: none"> • Labor Standards • Equal Opportunity • Section 3 Implementation • Davis Bacon Compliance Monitoring as well as site visits and on-site interviews with laborers • Other federal, local requirements

This meeting may also contain other items as requested by the subrecipient or the project engineer. The topics covered during the pre-construction meeting will be documented in minutes, which will then be added to the file.

13.2 Notice to Proceed

Upon receipt of the Authority to Use Grant Funds, VIHFA, can issue a Notice to Proceed as outlined in the Project Agreement. No physical work being paid for with CDBG funds shall commence prior to issuance of the Notice to Proceed.

13.3. Contractor’s Schedule

The subrecipient may obtain a construction project schedule outlining proposed activities from the prime contractor at the start of construction. A sample schedule may indicate appropriately the % of work scheduled for completion by any given date during the period. An update may be required, at a minimum, when work falls more than 10% behind schedule.

13.4. Progress Payments

The VIHFA will pay and/or reimburse eligible costs of the project up to a maximum as specified in the respective agreements. The grant funds will be disbursed based on satisfactory review of payment requisitions, invoices, bills, receipts, lien releases, and payroll records submitted to the VIHFA for disbursement. Subrecipient shall promptly pay appropriate vendors and provide satisfactory documentation to the authority evidencing payment to said vendors. The authority will not process any future request for disbursement unless the payment confirmation is received by the authority and is satisfactory in its sole discretion.

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13.5. Retainage

Retainage is money, usually 10% of the total amount due to the contractor, that is held by the subrecipient as additional insurance that the contractor will complete the construction work satisfactorily. The retainage is held pending the final inspection and acceptance of work. The retained amount may vary, depending on the total amount of the contract, progress of construction, and other specific instructions in the contract.

14.0 Construction Monitoring and Progress Meetings

Monitoring and Progress Meetings will be scheduled and performed throughout the construction period. This is to ensure that the contractor is performing in accordance with the technical specifications and that compliance is maintained with all federal and local standards and the terms of the contract.

14.1 Monitoring Frequency

VIHFA will perform monitoring visits to review construction related items, for review of compliance items. Visits frequency by the VIHFA shall depend on the project size and duration.

The subrecipient’s project engineer/manager shall also schedule monitoring visits at appropriate intervals during the various stages of the construction to observe the progress and quality of the work and to generally determine that work is proceeding in accordance with the Contract Documents.

14.2 On-Site Monitoring Visit

The five basic steps, outlined below, may occur during monitoring visit. Steps may be adjusted or omitted if deemed appropriate by the Program and Monitoring and Compliance Divisions.

- Notification
- Construction Progress Meeting
- Documentation, Data Acquisition and Analysis
- Exit Conference
- Follow-up Monitoring Letter

14.3 Notifications

The Infrastructure and Public Facilities Program and Monitoring and Compliance Divisions will

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reach out to the subrecipient to explain the purpose of the monitoring and to specify date(s) for the visit(s). A follow-up email/meeting invitation will be sent prior to the scheduled visit for the following:

1. Confirm the date and the scope of the monitoring.
2. Provide a description of the information you want to review during your visit; and
3. Specify the expected duration of the monitoring, which of your staff will be involved, what office space will be required, and what members of the subrecipient's staff will be interviewed.

14.4 Construction Progress Meeting

An on-site meeting will be conducted with the sub-contractor and its representative (Project A/E) and relevant General Contractor personnel prior to the commencement of the on-site construction review, corrective actions identified during previous visits and any other concerns of the parties involved.

14.4.1. Documentation, Data Acquisition and Analysis

A written record of the visit will be kept, including documentation of what was reviewed during the visit. A review of the contractor's requisition for payment will be conducted to ensure all work items requiring payment are included. You can include photographic evidence of your work in your submission. Work must match the design documents submitted.

Careful notes on the exit conference will be taken in order to document what the officer told the subrecipient and whether the subrecipient agreed with the tentative conclusions.

14.6 Exit Conference

Careful notes on the exit conference will be taken in order to document what the officer told the subrecipient and whether the subrecipient agreed with the tentative conclusions. At the end of the site visit, the monitoring officer will meet again with key representatives of the subrecipient organization to present the tentative findings from the monitoring. This exit meeting has four objectives:

1. Communicate preliminary results of the monitoring visit
2. Clear up any misunderstandings
3. Gather more information from the staff of the subrecipient to better understand their position
4. Ensure that any deficiencies identified by the monitoring officer are corrected.

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14. 7. Follow-up Monitoring Letter

The monitoring letter is used to create a permanent written record of the findings during the monitoring review. The project will include meeting documentation and any relevant site documentation. The monitoring letter will list every concern and finding. A notice of noncompliance is issued for a CDBG program rule or regulation. The specific corrective actions that must be taken by the subrecipient will be outlined. Some concerns were raised in the monitoring letter about the subrecipient's operations, which could lead to future problems because of their weaknesses. For each concern, specific recommendations for improvement will be provided. The deadlines for responding to the monitoring letter and correcting any deficiencies will be set in the letter itself.

14.8. Change Orders

If necessary for the project activity, VIHFA may authorize minor changes to the work provided they do not involve adjustments to the contract price, contract scope, or performance period of the contract and consistent with the general intent of the contract documents. The subrecipient is required to comply with change orders (written amendments to the contract with the contractor), which cover the following:

- Changes in work ordered by the subrecipient.
- Changes in work required because of acceptance or correction of defective work.
- Changes in work agreed to by the subrecipient and contractor.
- Changes in the contract price or time agreed to by the parties; or
- Those changes in the contract price or schedule that incorporates certain written decisions rendered by the project engineer.
- Any change orders that change the original approved scope of work, change the contract price, or cause changes in the construction schedule must be approved by VIHFA before they are executed.

15.0 Construction Management

15.1 Final Inspection and Punch List

Before recommending to the Subrecipient/Developer and the VIHFA that the project is complete, the Project manager should compile a list of deficiencies or work that remains to be completed and present it to both the contractor and the Subrecipient. This list of project deficiencies is

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referred to as the "punch list".

When the contractor is confident that the project has been satisfactorily completed and complied with any punch list items, the contractor will request the project engineer inform the subrecipient and the VIHFA that the project is ready for final inspection.

The final inspection will include a walkthrough with all parties through the entire project, pointing out the work completed by the contractor. The Subrecipient and VIHFA officials may question some of the contractor's work or clean up and request that these items be taken care of before the subrecipient will take possession of the project. In this case, the project engineer should prepare a final punch list and present it to the contractor. If the number of items on the final punch list is very small, the project engineer may recommend to the subrecipient that a Certificate of Substantial Completion be prepared.

15.2 Certificate of Substantial Completion (form to be developed)

The Project Engineer will provide a "Certificate of Substantial Completion" once the work is essentially finished if project activities are applicable. The certificate's issue date establishes the warranty dates and, more importantly it releases the contractor's surety company's obligation to complete the work in the event the contractor does not or cannot. Consequently, the subrecipient should only sign the Certificate of Considerable Completion after accepting the project and after the project engineer certifies that the work is done to a substantial level.

A section on the Certificate of Substantial Completion shall allow the project engineer and the subrecipient to indicate any minor tasks that are still outstanding that must be done in accordance with the contract's requirements. The project engineer will often advise the subrecipient.

The Certificate of Substantial Completion contains an area for the project engineer and the subrecipient to list minor items that remain to be completed under terms of the contract. The project engineer generally will recommend that the subrecipient retain enough funds from the contractor's payment requisition. This is to ensure that the contractor completes the work. The payment requisition for the work completed and recommended by the project engineer up to the date of the Certificate of Substantial Completion ought to be labeled "SEMIFINAL." In the event the work or punch list items remain to be completed, the conditions stipulated in the Certificate of Substantial Completion should be attached to the payment requisition.

After Substantial Completion is accepted the project engineering shall file a Notice of Termination with the subgrantee, and the VIHFA.

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15.3 Engineer’s Certificate of Completed Work

Prior to project closeout, a copy of the Certificate for Acceptance and Final Payment, signed by the project engineer or architect, must be submitted to VIHFA. This certificate shall cover all work included in the project (regardless of funding source), including subrecipient cash and in-kind. The certificate must indicate that work has been completed in accordance with drawings and specifications and is functioning properly with the recommendation for final payment.

15.4. Certificate of Approval

Permits, for all approved work, must be properly closed out per local authority requirements.

15.5. Warrantees/Guarantees

When the subrecipient or developer and the project engineer have signed the Certificate of Substantial Completion, the clock starts running on the warranty/guarantee period. The warranty/guarantee period must extend for a minimum of one (1) year. The warranty/guarantee period ought to be clearly defined in the contract between the subrecipient and the contractor and should be specific to begin from the date of substantial completion that the contractor will repair or replace any defective equipment or workmanship at no cost to the subrecipient.

15.6. Final Payment

The contractor is entitled for final payment when the contractor has completed all of the work required under the contract agreement and all compliance requirements have been met. Final payment releases all of the retainage already withheld from the contractor during the course of the project and represents the final reconciliation between the subrecipient and the contractor for services rendered. The final payment requisition looks the same as other payment requisition that the subrecipient has processed in the course of the project with the exception that it should clearly state that it is the “Final” requisition.

15.7. Project Close Out Procedures with VIHFA

The VIHFA initiates the close-out process for a project when the anticipated project has reached completion; all funds to be paid with CDBG funds have been incurred, with the exception of monitoring costs that are tracked separately; the work, wholly or partially financed with any of the CDBG grants is completed; and all other responsibilities of the grantee or subrecipient as outlined in the Memorandum of Agreement between VIHFA and the subgrantee have been met.

The VIHFA will issue a Notification for Close-Out to the subrecipient to initiate the Close-out process for the project. If the project activity incorporates multiple projects, then each project can

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be closed out separately at the time of completion.

16.0. General Provisions

16.1. Version History

Version history is tracked on the table title page, with notes regarding version changes. The dates of each publication are also tracked in this table. The first version of this document is 1.0.

Substantive changes within this document that reflect a policy change will result in the issuance of a new version 2.0, an increase in the primary version number. Future policy changes will result in additional revision and a new primary version number issuance.

Non-substantive changes such as minor wording and editing, or clarification of existing policy that do not affect the interpretation or applicability of the policy will be included in minor version updates denoted by a sequential number increase behind the primary version number. Such changes would result in a version number such as 2.1, 2.2, etc.

16.2. Policy Change Control Board

Policy changes for the CDBG-MIT Program are considered through a change control process, which includes a Policy Change Control Board (PCCB). The PCCB is composed of the Special Council for Disaster Recovery, the Senior Housing Program Manager, the Senior Policy Manager, the Housing Program Manager, at least one Subject Matter Expert, and other program staff members representing Program leadership as needed.

When policy clarifications, additions, or deletions are needed to more precisely define the rules by which the Program will operate, Program staff will submit a Policy Change Request Form or a Request for Decision Form for internal review by the PCCB. Within the PCCB, two members will separately perform a review to verify that all relevant information and any supporting documentation are included in the request. Upon PCCB concurrence by these two members that the request raises a policy issue, rather than a process issue, the Policy Change Request Form or Request for Decision is forwarded to the Policy Change Control Board for consideration. The requests are compiled and brought before the entire PCCB for a final policy change determination.

The PCCB meets as needed to consider all pending requests and critical policy decisions.

16.3. Conflict of Interest

The VIHFA Conflict of Interest Policy applies to the following individuals (“covered persons”), either within VIHFA or one of its subrecipients/subgrantees:

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- Agents
- Consultants
- Elected or appointed officials
- Employees
- Officers

Covered persons must adhere to all requirements, declare any ethical, legal, financial, or other conflicts of interest involving a VIHFA-assisted activity, and vacate any positions of decision-making authority regarding any such conflicts, per the following regulations:

All covered persons under this policy are required to sign a Conflict-of-Interest Disclosure Statement (Appendix B) if they are aware or suspect that they have a current or prior relationship or familiarity with a potential applicant, contractor, or other stakeholder receiving VIHFA funds. Potential conflicts of interest may include:

- Relationships with neighbors, acquaintances, friends, family members, and other members of the community;
- Relationships (personal or professional) with co-workers;
- Relationships with contractors

Any individual or entity seeking funds from VIHFA for any activity in which they or related individuals or organizations have an interest must disclose that interest when applying for funding. This separation of responsibility will ensure an unbiased approach to the processing of all applications, contracts, and final eligibility determinations. The goal is for every citizen to have confidence that their application is being processed with efficiency and integrity. For more information, please reference the VIHFA Conflict of Interest policy.

16.4. Prevention of Fraud, Waste, And Abuse

This Fraud, Waste, and Abuse Prevention Policy is established to facilitate the development of controls that will aid in the detection and prevention of fraud against the Authority in the administration of all VIHFA programs and the Authority’s internal procurement. Some actions constituting fraud are as follows:

- Any dishonest or fraudulent act;
- Misappropriation of funds, securities, supplies, or other assets;
- Impropriety in the handling or reporting of money or financial transactions;
- Profiteering because of insider knowledge of the Authority’s activities;
- Disclosing confidential and proprietary information to outside parties;
- Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to the Authority.

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- Destruction, removal, or inappropriate use of records, furniture, fixtures, and equipment; and/or
- Any similar or related irregularity.

The Authority intends to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations. Any investigative activity required will be conducted without regard to the suspected wrongdoer’s length of service, position/title, or relationship to the Authority.

16.5. RECORD-KEEPING AND REPORTING

All applicants shall comply with 24 C.F.R. Part 5.2, Compliance with the Privacy Act, which requires the safeguarding of personally identifiable information (PII) by:

- Minimizing the use of PII on program documents and records. Providing access to PII only to those who require it for official business.
- Securing PII appropriately for paper or electronic forms.

Training for data security and compliance with the Privacy Act will be provided to all employees and contractors as part of their onboarding process. In accordance with HUD regulations, as a grantee and recipient of CDBG-DR funds, VIHFA follows the records retention as cited in 2 CFR Part 200.333-337, which includes financial records, supporting documents, statistical records and all other pertinent records are maintained for five years after closeout of the grant between HUD and VIHFA. VIHFA established requirements in its sub-recipient and contractor agreements for compliance with all HUD cross cutting requirements outlined in 2 CFR 200: Appendix II, including record keeping requirements. Records such as grant agreements, subrecipient agreements and other legal documents enforcing provisions of long-term affordability shall be maintained for five (5) years after the termination of the compliance period. Additional information regarding Records retention, how the program will manage Personally Identifiable Information (PII), and file security, please refer to VIHFA Recordkeeping and Reporting Policy.

The following records are the minimum required to be maintained by VIHFA and its Subrecipients:

- Records providing a full description of each activity assisted with CDBG-MIT funds.
 - Location;
 - Amount of CDBG-MIT funds budgeted, obligated, and expended; and
 - The provision in subpart C under which it is eligible.
- Records demonstrating that each activity undertaken meets one of the criteria for National

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Objectives, as set forth in § 570.208.

- Records demonstrating that the recipient has made determinations required as a condition of eligibility of certain activities. Where applicable, records which demonstrate compliance with the requirements of § 570.202(g) or §570.204(a)(5) or document the State’s grant recipient’s basis for exception to the requirements of those paragraphs.
- Records, which demonstrate compliance with citizen participation requirements.
 - Records, which demonstrate compliance with the requirements regarding acquisition, displacement, relocation, and replacement housing.
 - Fair housing and Equal Opportunity records.
 - Financial records, as required by 2 C.F.R. part 200, 24 C.F.R. § 570.502, and state requirements, which include, but are not limited to:
 - Current authorizations and obligations of CDBG-MIT funds;
 - Unobligated balances (funds remaining available for distribution);
 - Assets and liabilities; CDBG-MIT Record Keeping, Management and Reporting
 - Program income (if any);
 - Evidence indicating that the use of program funds belongs to the eligible activity; and
 - Evidence indicating that each expenditure is necessary, reasonable, and directly related to the project.
- Agreements and other records related to lump sum disbursement to private financial institutions for financing rehabilitation.

Records, such as mortgages and other legal documents enforcing provisions of long-term affordability, shall be maintained for five (5) years after the termination of the compliance period. For more information, please reference the VIHFA Recordkeeping and Reporting Policy.

16.6. Reporting Requirements

Subrecipients are required to submit a Monthly Performance Reports and Quarterly Performance Report (QPR) to VIHFA. QPR’s will be used to assess program progress, outcomes met, timeliness, and expenditures for the quarter. It is important because it provides the VIHFA with information that is required to be provided to the U.S. Department of Housing and Urban Development (HUD) on a quarterly basis. Therefore, reports must be submitted on time and contain accurate information.

Submission of the required Quarterly Performance Report begins with the first report deadline after the Subrecipient Agreement has been signed and/or project approval has been received for HFA directly administered projects and continues until the Subrecipient has submitted the Final Quarterly Performance Report and the project closeout forms.

16.7. Citizen Complaints

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VIHFA will accept written citizen complaints from citizens related to the disaster recovery programs, the Action Plan, substantial amendments, or quarterly performance reports. The formal complaint form is attached in this document as Appendix A.

Written complaints should either be submitted via email to: cdbgdrcomplaints@vihfa.gov or mailed to the address below:

Virgin Islands Housing Finance Authority
Attention: Citizen Complaints
1110 Beltjen Road, Suite 200
St. Thomas, VI 00802-6735

The CDBG-MIT Program will provide a written response to every citizen complaint within 15 working days of the complaint. See the Citizen Complaints Policy for more information.

16.8. Grant Closeout

Project close-out is the process by which VIHFA determines all requirements of the subrecipient agreement between VIHFA and the subrecipient have been completed in accordance with the terms and conditions of the subrecipient agreement. Project closeout begins when:

- All project expenses to be paid with CDBG-MIT funds (except for closeout costs) have been completed and payment requested;
- Approved work has been finished;
- Any other responsibilities detailed in the subrecipient agreement have been fulfilled; and
- All monitoring or audit findings have been cleared.

After all disbursements or over-disbursement reconciliations and resolution of findings have been verified, the file is ready for final closeout and archiving by VIHFA. The applicant is instructed to keep all receipts and documentation for a minimum of five (5) years in the event their file is audited or reviewed.

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APPENDIX

Appendix A: HUD Green Building Retrofit Checklist for the U.S.V.I

The CPD Green Retrofit Checklist promotes energy efficiency and green building practices for residential retrofit projects. The USVI CDBG-MIT program had adapted the checklist to reflect the unique climate of the USVI.

Note: Historic averages for high and low temperatures by month in the USVI, coupled with the fact that there is no need for space heating equipment, should be sufficient evidence for exemption from typical Green requirements for building envelope insulation, air sealing, and ventilation. This source provides a simple format for displaying average high and low temperatures by month. <http://www.intellicast.com/Local/History.aspx?location=USVI9994>

The phrase “when replacing” in the Checklist refers to the mandatory replacement with specified green improvements, products, and fixtures only when replacing those systems during the normal course of the retrofit.

WATER AND ENERGY CONSERVATION MEASURES

Water-Conserving Fixtures

Install or retrofit water-conserving fixtures in any unit and common facility, using the following specifications: Toilets-- 1.28 gpf; Urinals-- 0.5 gpf; Showerheads-- 2.0 GPM; Kitchen faucets-- 2.0 gpm; and Bathroom faucets-- 1.5gpm. [gpf = gallons per flush; gpm = gallons per minute]

ENERGY STAR Appliances

Install ENERGY STAR-labeled clothes washers, dishwashers, and refrigerators, if these appliance categories are provided in units or common areas.

Domestic Hot Water Systems

New water heaters shall be ENERGY STAR labeled.

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Efficient Lighting: Interior Units

All newly installed lighting fixtures must be ENERGY STAR-qualified or have ENERGY STAR-qualified lamps installed, including emergency lighting in multifamily.

INDOOR AIR QUALITY

Low/No VOC Paints and Primers

All interior paints and primers must be less than or equal to the following VOC levels: Flats--50 g/L; Non-flats--50 g/L; Floor--100 g/L. [g/L = grams per liter; levels are based on a combination of the Master Painters Institute (MPI) and GreenSeal standards.]

Low/No VOC Adhesives and Sealants

All adhesives must comply with Rule 1168 of the South Coast Air Quality Management District. All caulks and sealants must comply with regulation 8, rule 51 of the Bay Area Air Quality Management District.

Clothes Dryer Exhaust

Vent clothes dryers directly to the outdoors using rigid-type duct work, or into the crawl space on masonry homes if there is not an existing vent outlet to the exterior.

Mold Inspection and Remediation

Inspect the interior and exterior of the building for evidence of moisture problems. Document the extent and location of the problems and implement the proposed repairs according to the Moisture section of the EPA Healthy Indoor Environment Protocols for Home Energy Upgrades.

Mold Prevention: Surfaces

When replacing or repairing bathrooms, kitchens, and laundry rooms, use materials that

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have durable, cleanable surfaces.

Mold Prevention: Tub and Shower Enclosures

When replacing or repairing tub and/or shower enclosures, use non-paper-faced backing materials such as cement board, fiber cement board, or equivalent in bathrooms.

Integrated Pest Management

Seal all wall, floor, and joint penetrations with low-VOC caulking or other appropriate sealing methods to prevent pest entry. [If applicable, provide training to multifamily buildings staff.]

Lead-Safe Work Practices

For properties built before 1978, if the project will involve disturbing painted surfaces or cleaning up lead contaminated dust or soil, use certified renovation or lead abatement contractors and workers using lead-safe work practices and clearance examinations consistent with the more stringent of EPA's Renovation, Repair, and Painting Rule and HUD's Lead Safe Housing Rule.

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Appendix B: Conflict of Interest Disclosure Statement

Appendix B: Conflict of Interest Disclosure Statement

Contract/Contractor/Subrecipients/Vendors/Grantee/Employees:

- I declare no conflict of interest
- I declare the following potential conflict of interest:

I hereby affirm that the disclosure made above are complete and correct to the best of my information and belief. I shall not be participating in the discussion and decision-making of this matter where a conflict of interest exists. Further, I agree that if I become aware of any information that might indicate that this disclosure is inaccurate or that I have not complied with the conflict of interest policy, I will notify my supervisor and/or management of the CDBG-MIT Program and the Virgin Islands Housing Finance Authority (VIHFA).

VIHFA's established Conflict of interest policy outlines the process of formally disclosing any potential conflict of interest between VIHFA and entities with which they conduct business, in accordance with 2 CFR 200.112. Any potential conflicts must be promptly reported to the Virgin Islands Housing Finance Authority for further investigation and subsequently to the Department of Housing and Urban Development.

Name: _____

Date_

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APPENDIX C

Procedure Determining Voluntary or Involuntary Acquisition

Acquisitions may be either voluntary or involuntary. The terms relate to whether the acquiring entity possesses the authority of eminent domain (condemnation) and if the transaction occurs because of the use or the intent to use that authority. The URA provides different protections to property owners depending on whether the acquisition is voluntary or involuntary. (See 49 CFR 24, Subpart B Real Property Acquisition) For a housing Buyout or Acquisition program a subrecipient with eminent domain authority should work to consider a voluntary program over an involuntary program to minimize the costs and maximize the benefits of buyouts.

A subrecipient should design and implement buyout or acquisition programs using the following best practice principles:

- Using real property damage data, e.g. Flood Plain Administrator reports, FEMA Individual Assistance property loss, Flood Indentation Maps, Geographic Information System (GIS) software, repetitive loss data, substantial damage data, etc. allows the subrecipient the opportunity to consider how it will best acquire a sufficient number of contiguous properties to create a public amenity;
- With support data as discussed above, the subrecipient should identify and prioritize buyout areas in advance and create list of willing sellers and incorporate plans for a buyout into its hazard mitigation plans;

At no time is it permissible for a subrecipient to undertake the acquisition under threat or use its eminent domain authority if initial negotiations for a voluntary acquisition fail. If the subrecipient cannot ensure the applicable requirements of 49 CF R 24.101(b)(1)(i)-(iv) are satisfied, then such acquisitions must be pursued as an involuntary acquisition under the full requirements of 49 C.F.R. Part 24 Subpart B.

VOLUNTARY

Acquiring Entities with Eminent Domain Authority—Voluntary Acquisition

Voluntary acquisitions are negotiated between the property owner and the subrecipient without the threat of eminent domain or condemnation. For subrecipient

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with the authority of eminent domain, acquisitions must meet the following conditions to be considered voluntary (see 49 CFR 24.101(b)(1)(i)-(iv)):

- No specific site is needed and any one of several properties could be acquired for project purposes;
- The property is not part of an intended, planned, or designated project area where other properties will be acquired within specific time limits;
- The acquiring entity must inform the owner in writing that the property will not be acquired through condemnation if negotiations do not reach an amicable agreement;
- The acquiring entity must inform the owner in writing of the property’s fair market value using

an appraiser (Housing Buyout or Acquisition Programs); and

Acquiring Entities without Eminent Domain Authority—Public Land Acquisition

Subrecipients do not have eminent domain authority to obtain publicly owned land. Acquisitions of real property owned by federal, state, local governments, or political subdivisions (such as school districts or river authorities) are considered voluntary acquisitions. The subrecipient must still provide notification to the governmental entity regarding interest in the property, the lack of eminent domain to acquire the property, and the estimated fair market value of the property to be acquired before negotiating the sale, lease, or donation of the public land.

INVOLUNTARY

If an acquisition by an entity with eminent domain authority does not comply with the voluntary acquisition requirements described above (see 49 CFR 24.101(b)(1)(i) – (iv)), the acquisition is considered involuntary. Involuntary acquisition procedures must be followed for any acquisition of real property for programs and projects where there is federal financial assistance in any part of project costs.0.0.0 Voluntary Acquisition Process

Step 1—Determine Property to be Acquired.

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property to be acquired. For a housing Buyout or Acquisition program,

Step 2—Submit Form A600 Initial Acquisition Report to Housing Project Manager

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Consult with the Housing Project Manager for review of URA requirements and determination of acquisition levels.

Step 3—Determine Fair Market Value of the Property

The subrecipient may use a fair market estimate such as a tax valuation to determine value. For a housing Buyout or Acquisition program, an appraisal is required.

Step 4—Notify Owner of Property Rights

Voluntary acquisitions can occur only when the subrecipient lacks the authority to condemn (eminent domain) or when it revokes its intent to use eminent domain by giving specific written notice to the property owner.

The subrecipient must notify the owner in writing, prior to making a purchase offer, of the property’s fair market value. The subrecipient or acquiring entity will not acquire the property if an amicable settlement cannot be reached.

Optional: In addition, the owner can also be invited to donate the property. The acquiring entity may include a form for the owner to complete allowing him/her to accept or decline the request to donate the land. For Housing Buyouts or Acquisitions, the subrecipient may consider incentives as part of the negotiations. Incentives must be outlined in the subrecipient approved Buyouts or Acquisitions Guidelines.

Step 5—Complete Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR 58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by HUD. If a significant environmental impact will occur, look at alternative sites.

Step 6—Determine Price or Donation

The owner may choose to donate the property or accept the fair market value of the property and has notified in Steps 3 and 4. If the donation and the fair market value are rejected by the owner, then the subrecipient may then negotiate with the property owner to reach an agreement. A best practice is to create a

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calculation that is applied to all properties to ensure that all are treated uniformly by the subrecipient. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations for voluntary acquisition, it would be entirely appropriate for the subrecipient to apply the administrative settlement concept and procedures in 49 CFR 24.102(i) to document the rationale for determining the negotiated price.

Step 7—Execute Agreement

The subrecipient and the property owner must execute a sale or donation agreement and the deed must be recorded as required by State regulations.

Step 8—Documentation Information

The subrecipient must prepare and submit to the Housing Program Manager all acquisition documentation for each parcel.

Involuntary Acquisition Process

Step 1—Determine property to be acquired

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property that must be acquired.

Step 2—Submit the Initial Acquisition Report to the Housing Project Manager for review and approval by the Deputy Director of Housing

The subrecipient must consult with the Deputy Director of Housing before pursuing any involuntary acquisition.

Step 3—Notify Owner of Property Rights

As soon as feasible, the subrecipient must notify the owner in writing of its interest in acquiring the property and the basic protections provided to the owner under URA and HUD regulations.

The subrecipient must provide the owner with the following, prior to making a

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purchase offer:

- Notice to Owner for Involuntary Acquisition (see [Resources](#)—Resource 8.4 at the end of this chapter and [49 CFR Part 24](#));
- “When a Public Agency Acquires Your Property”—This HUD booklet describes important features of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended (see [Resources](#)—Resource 8.5); and
- “Optional: the owner can also be invited to donate the property. The acquiring entity may include the following documents: Form for the owner to complete accepting or declining the request to donate the land and/or
 - Form on which the owner may waive the right to an appraisal of the land.

Step 4—Determine Appraised Value of the Property

An appraisal of fair market value is required for property acquired under involuntary procedures unless the following (see 49 CFR 24.102(c)(2)):

- If the property valuation is simple and the anticipated value of the proposed acquisition is \$10,000 or less, no formal appraisal is required. The subrecipient must prepare a waiver valuation and have a reasonable basis for the waiver valuation;
- If the owner is donating the property and releases the acquiring/condemning authority from its obligation to appraise the property.

If the value of the property exceeds \$10,000, but is less than \$25,000, the program will consider written requests for waiver of appraisal.

The process of estimating value when an appraisal is determined to be unnecessary is

considered a “waiver valuation.” Criteria for appraisals are addressed in 49 CFR 24.103.

The property owner, or the owner’s designated representative, must be invited to accompany the appraiser 49 CFR 24.102(c)(1). The subrecipient should consult with their legal counsel for guidance with respect to the requirements and procedures of the URA in determining just compensation.

Qualifications of Appraiser and Review Appraiser

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The appraisal procedures require a qualified appraiser and a qualified review appraiser to be procured (49 CFR 24.103 -.104) in compliance with VIHFA’s procurement procedures. A contract appraiser hired to perform an appraisal, or a review appraisal must be a licensed or certified real estate appraiser.

- Appraiser—The appraiser must provide an independently and impartially prepared opinion of the value of the defined property as of a specific date, supported by the presentation and analysis of relevant fair market information;
- Review Appraiser—Per 49 CFR 24.104, the review appraiser must examine the analysis of fair market information in appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103, and all other applicable requirements. The review appraiser may be a member of the staff but must have adequate experience, education, training, and certification/licensing. If the review appraiser is unable to recommend or approve an appraisal as an adequate basis for the establishment of just compensation, the review appraiser may, as part of the review, present fair market information to support a recommended value.

Step 5—Notification—Establishment and Offer of Just Compensation

Before the initiation of negotiations, the subrecipient must establish an amount believed to be just compensation to offer the property owner. The subrecipient must provide the just compensation value of the property to the owner in writing prior to making a purchase offer. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The just compensation determination statement and notification to the owner must be signed by subrecipient’s local designated official and must include, at a minimum, the following:

- (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated;
- (2) A description and location identification of the property and the interest in

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the property to be acquired; and

(3) An identification of any buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation.

(See generally 49 CFR

24.102(e)(1)-(3)) Step 6—Complete

Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR 58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and the release of funds has been authorized by HUD..

Step 7—Determine Price

The owner may choose to donate the property or may accept the just compensation amount, in which case the parties may proceed with the execution of appropriate donation or sales documents in

Step 8.

The owner may also decline the offer of just compensation and negotiate a different price. The owner must be given reasonable opportunity to present material and information believed to be relevant to the value of the property, and to suggest modifications in the proposed terms and conditions of the purchase.

The purchase price may differ or exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement have failed and the subrecipient local official approves such settlement as reasonable, prudent, and in the public interest. Once a final price is determined to be acceptable by both parties, an Administrative Settlement with written justification shall be prepared, which states pertinent information, including trial risk and other factors that support such a settlement (see 49 C.F.R. 24.102(i)).

Step 8—Execute Agreement

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The subrecipient and the property owner must execute a sales or donation agreement. The deed or easement must be recorded as required by State regulations.

Step 9—Report Acquisition Parcel Information

The subrecipient must prepare and submit to the Housing Project Manager information regarding each parcel.