

SERVICE AGREEMENT

THIS AGREEMENT made as of the 21 day of November, 2024, in the Territory of the United States Virgin Islands, by and between **TROPICAL FENCING, LLC**, having its principal place of business at 97 Recovery Hill, Mount Welcome, Christiansted, St. Croix, U.S. Virgin Islands 00820 (hereinafter the “**Contractor**”) and the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**, having its principal place of business at 3202 Demarara Plaza, Suite 200, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00802 (hereinafter the "Authority" or “VIHFA”). Each party may be referred to in the singular as “Party” and collectively as the “Parties”.

WITNESSETH

WHEREAS, the Authority desires the services of a qualified and licensed United States Virgin Islands (“USVI”) company to install new fencing at Plot # 221 Campo Rico, St. Croix, USVI (hereinafter the “Project”); and

WHEREAS, the Authority obtained quotes from three companies to complete the Project, including the Contractor, whose bid in the amount of Thirty-Eight Thousand Seven Hundred Fifty-Three and 00/100 (\$38,753.00) Dollars was the lowest bid; and

WHEREAS, the Authority’s Executive Director authorized the VIHFA to enter into a contract with the Contractor to complete the Project; and

WHEREAS, the VIHFA desires to enter into a contract with the Contractor to complete the Project; and

WHEREAS, the Contractor by its acceptance of the terms and conditions of this Contract is willing and capable to complete the Project.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this Contract, the parties hereto do covenant and agree as follows.

1. **SCOPE OF WORK:** The Contractor shall be responsible for furnishing all labor, tools, materials, equipment, miscellaneous supplies, and services necessary to install 588 linear feet of 8 feet tall new chain link fence and four (4) 10 ft. wide double access gates at Plot 221 Campo Rico, St. Croix, U.S. Virgin Islands.

2. **COMMENCEMENT DATE:** The Contractor agrees that time is of the essence and will commence work no less than seven (7) days after date that the Notice to Proceed is issued.

3. **TERM:** The VIHFA will contract for a period of ninety (**90**) **calendar days** from the Notice to Proceed. The VIHFA reserves the right to modify and/or terminate the contract if the selected Respondent fails to perform in a manner consistent with the terms of the contract. In addition, the VIHFA reserves the right to modify and/or terminate the contract if funding becomes unavailable.

4. **LIQUIDATED DAMAGES:** Should the Contractor fail to complete the scope of work within the Contract scheduled time period, the Contractor agrees to pay to the VIHFA, as liquidated damages, **\$100.00** for each calendar day or portion thereof that the Contractor fails to commence and complete the project in accordance with the Contract term. The liquidated damages shall first be deducted from any contract monies due but not yet paid to the Contractor, to the extent available.

5. **COMPENSATION:** The Authority, in consideration of the satisfactory performance of the services described section 1 (“Scope of Work”) above, shall pay the Contractor as compensation for services rendered under this Contract an amount not to exceed of **Thirty-Eight Thousand Seven Hundred Fifty-Three and 00/100 (\$38,753.00) Dollars.**

5.1 TERMS OF PAYMENT:

- (a) **Mobilization Costs:** The Authority shall pay the Contractor mobilization costs in the amount of **10% which is Three Thousand Eight Hundred Seventy-Five Dollars and 00/100 Cents (\$3,875.00)** following the pre-construction meeting and issuance of the notice to proceed.
- (b) **Subsequent Payments:** All subsequent payment will be based upon work in place.
- (c) **Retainage:** A 10% retainage will be withheld from each payment following the mobilization payment.
- (d) Prepare and submit an Application for Payment and invoice (i.e., AIA form G702/G703), based upon a previously submitted and approved schedule of values, (“S.O.V.s”).
- (e) For the amounts to be paid in paragraphs (a) through (d) above, the Contractor shall allow the Authority enough time to review and process payment requests, which can take on average four (4) weeks after the Authority’s receipt, review, and acceptance of Contractor’s invoice(s).
- (f) It is expressly understood and agreed that in no event shall the amounts to be paid by the VIHFA to the Contractor under this Contract exceed the rates or conditions made as a part of this Contract unless expressly agreed to in writing.
- (g) If the funding source for this Contract is federal, Contractor’s obligations under this Contract and VIHFA’s obligation to pay the Contractor for services performed under this Contract are contingent upon the availability of applicable funding. VIHFA shall be the final authority as to the availability of funds for this Contract and as to what constitutes “applicable funding” to complete this Contract. The

Contractor’s Initials: _____

VIHFA Initials:  _____

Contractor is responsible for submitting to VIHFA, all required documentation for payment. If any such funds are not made available for the Contract purpose, such event will not constitute a default by VIHFA, but shall entitle Contractor to terminate if funds are not received and available to compensate Contractor for any period exceeding forty-five (45) days. Notwithstanding the foregoing, Contractor shall be paid for all costs and services incurred to the date of any such notification from the federal funding source to VIHFA regarding the non-availability of applicable federal funds.

- (h) The VIHFA reserves the right to modify and/or terminate the contract if funding becomes unavailable. In addition, the VIHFA reserves the right to modify and/or terminate the contract if the Contractor fails to perform in a manner consistent with the terms of the contract.

6. REPRESENTATIONS, WARRANTIES, AND COVENANTS BY CONTRACTOR: The Contractor covenants, warrants and covenants that:

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

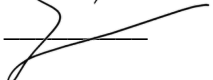
(b) It will, during the term of this Contract, remain in good standing and qualified to do business under the laws of the Territory, including maintenance at all times of a valid V.I. business license, and will not cease doing business, dissolve or otherwise dispose of all or substantially all of its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

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

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

(e) No information, statement, or report furnished in writing by the Contractor in connection with the negotiation of, or assurance under, this Agreement and the consummation of the transactions contemplated hereby, contains any material misstatement of fact or omits to state a material fact that would make the information, statement or report misleading.

Contractor's Initials: _____

VIHFA Initials: 

(f) It has obtained all applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and has familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

(g) It is fully informed regarding all the conditions affecting the work to be performed including labor and materials to be furnished for the completion of the Contract and the Contractor represents that it is fully equipped, competent, and capable of performing the work and is available to perform such work.

(h) The Contractor further represents that it shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in the United States Virgin Islands and that it will provide a standard of care equal to, or superior to, care used by service providers similar to Contractor in the United States Virgin Islands.

7. PROFESSIONAL STANDARDS: Contractor will complete all work in accordance with standard Construction Industry practices and the work shall conform to all local building codes and regulations which apply to the work being performed whether or not covered by the project specifications and drawings, including any Contractor registration requirements. Maintain the professional standards applicable to its profession upholding Construction Management Standards of Practice and related technical competencies. Contractor warrants that the final product of Contractor's work shall be fit for the purposes for which it is intended.

8. CONSTRUCTION WARRANTY: The Contractor shall fully guarantee all work under this Contract for a period of one (1) year by providing a Labor and Material warranty for all work under the Contract from the date of VIHFA's final acceptance of the work, against all defects in both workmanship and materials. The Contractor shall promptly remedy and repair any defects in materials or workmanship, without expense to the VIHFA, no later than fifteen (15) calendar days after receipt of a written notice of a defect and provide a one-year warranty on such repairs. The Contractor shall require warranties from all subcontractors and shall deliver copies of all warranties along with all equipment and material to VIHFA prior to the final inspection. To include, but not limited to, roofing installation and materials, window installation and materials, generator, elevator and HVAC systems for residential units.

The Contractor shall also deliver copies of all product manuals, specifications, and other instructional materials pertaining to any fixtures or equipment installed pursuant to this Contract to VIHFA at the termination of this Contract, or earlier upon request. All such material shall become the property of VIHFA.

9. DEFECTIVE WORK: The inspection of work shall not relieve the Contractor of any of its obligations to fulfill the terms and conditions of the Contract as herein prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by VIHFA's Project Manager and accepted or paid for.

Contractor's Initials: _____

VIHFA Initials:  _____

If the work or any part thereof shall be found defective at any time before the final acceptance of the whole work, or the final payment thereof, the Contractor shall forthwith make good such defect in a manner satisfactory to VIHFA's Project Manager and replace at its own expense damaged or unsuitable materials with the new material of satisfactory quality.

10. MECHANIC'S LIEN: Contractor agrees to protect, defend, and indemnify VIHFA from any claims for unpaid work, labor, or materials with respect to Contractor's Performance under this Contract and shall execute a Partial Lien Waiver upon receipt of each payment. Final payment shall not be due until the Contractor has delivered to VIHFA a Final Release of Lien for all work completed on the Project including all labor payments, material purchases, and any subcontractors or service providers for work completed arising out of Contractor's Performance or a receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to VIHFA indemnifying VIHFA against any and all liens.

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

12. INSURANCE: The Contractor shall maintain General Liability Insurance, in a form acceptable to the VIHFA, on a "per occurrence" basis with a minimum limit of not less than **One Million (\$1,000,000.00) Dollars** 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 operation under the contract whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by any of them. The insurance policy shall name the VIHFA as Certificate Holder and an "Additional Insured" via an endorsement as follows:

Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200
St. Thomas, U. S. Virgin Islands 00802

Additionally, Contractor shall provide the VIHFA with a copy of Contractor's current liability insurance policy within ten (10) working days after the execution of this contract.

Upon failure of the Contractor to furnish, deliver and maintain such insurance, this contract, at the election of the VIHFA may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

Contractor's subcontractor and /or subconsultant shall also carry the insurance required by this Contract in the amount usual and customary for work in the industry subject to normal deductibles and covenants that subcontractor and/or subconsultant will maintain such coverage during the term

Contractor's Initials: _____

VIHFA Initials:  _____

of this Contract. The Subcontractor's and/or subconsultant's liability insurance policy shall name the VIHFA as an "Additional Insured".

13. WORKERS' COMPENSATION INSURANCE : Contractor shall obtain and maintain Workers' Compensation Insurance coverage for the term of this Contract and provide the VIHFA with a copy of Contractor's Workers' Compensation Insurance Certificate.

14. INDEMNIFICATION: The Contractor shall indemnify, defend, and hold harmless VIHFA, its property, consultants, employees, and the funding agency harmless from and against all claims, damages, losses, and expenses directly arising as a result of Contractor's work or otherwise caused in whole or in part by any breach of this Contract or negligent act or omission of the Contractor's subcontractor (s), any person or organization directly or indirectly employed by them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of the negligence of such party.

15. BONDING REQUIREMENTS¹

a. **PERFORMANCE BOND:** To secure fulfillment of all of the Contractor's obligations under this Contract, Contractor shall execute and deliver to VIHFA, concurrently with this Contract, a Performance Bond with a Power of Attorney, on forms provided by the Contractor and acceptable to VIHFA, in the amount of \$____N/A_____.

b. **PAYMENT BOND:** To assure payment as required by law of all persons supplying labor and material in the execution of the Work provided for in this Contract, Contractor shall execute and deliver to VIHFA, concurrently with this Contract, a Performance Bond with Power of Attorney, on forms provided by the Contractor and acceptable to VIHFA, in the amount of \$____N/A_____.

c. If bonds are required, the bonds must be obtained from guarantee or surety companies authorized to do business in the USVI 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. Use of companies on this circular is mandatory.

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

17. SUPERVISION OF WORKERS: Contractor's authorized representatives shall supervise all of its employees, subcontractors and authorized representatives. All workers must be competent

¹ Pursuant to Section 8 of the VIHFA's Procurement Policy, performance and payment bonds are required for construction contracts exceeding \$500,000.00

Contractor's Initials: _____

VIHFA Initials:  _____

and skilled in their work.

18. SAFETY AND PROTECTION : Contractor shall comply with all safety and protection requirement as set forth by OSHA regulations and compliance requirements. Contractor shall hold weekly Safety meetings and records of such meetings shall be maintained on site for inspection as per OSH A regulations. Traffic control measures shall be maintained when traversing from designated laydown and storage yards to Project site. Required personnel protection equipment must be worn at all times when on construction or renovation site. At a minimum e ach employee is required to wear a hard hat and safety glasses. High visibility safetyvests with reflective striping are required when employees are exposed to vehicular traffic, or high visibility shirts should be worn at all times. All workers must wear shirts with sleeves, long work pants, and appropriate boots when working on a construction or renovation site. Sleeveless or tank top shirts, short pants, sweatpants, sneakers, sandals, and high -heeled or open-toed shoes are not permitted. Additional PPE may include protective gloves, hearing protection, full face shield when cutting, grinding, or chipping, and also fall protection equipment when working above 6 feet.

19. INDEPENDENT CONTRACTOR: The Contractor shall perform this Contract as an independent contractor, and nothing herein contained shall be construed to be inconsistent with this relationship or status.

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

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

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

Contractor's Initials: _____

VIHFA Initials:  _____

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

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

24. **RIGHT TO WITHHOLD:** If work under this Contract is not performed in accordance with the terms hereof, the Authority will have the right to withhold, out of any payment due to Contractor, such sums as the Authority may deem ample to protect it against loss or to assure payment of claims arising therefrom, and at its option, the Authority may apply such sums in such manner as the Authority may deem proper to secure itself or to satisfy such claims. The Authority will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

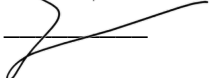
25. **TERMINATION:**

A. Termination/Suspension for Cause

Notwithstanding any other provision of this Contract, VIHFA may, after giving reasonable written notice specifying the effective date, may suspend or terminate this Contract in whole or in part if Contractor materially fails to comply with any material term of this contract, which shall include, but not be limited, to the following:

- a. The violation of any of the material terms or conditions of this Contract.
- b. The making of any material misrepresentation by the Contractor in the furnishing of any information to the VIHFA.
- c. Repeated failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and guidelines, policies or directives as may be applicable at any time;
- d. Failure, due to Contractor's negligence or willful misconduct, of Contractor to fulfill in a timely and proper manner the obligations under this Contract;
- e. Continual submission by Contractor of reports to VIHFA or HUD, or their auditors, reports that are incorrect or incomplete in any material respect, provided Contractor is given notice of said failure and fails to correct the same within a reasonable amount of time; or
- f. Improper use of funds as provided for under this Contract. If, through any cause, Contractor shall otherwise fail to fulfill its obligations under this Contract in a timely and proper manner, or if Contractor shall violate any of the covenants or stipulations of this Contract, VIHFA shall thereupon have the right to terminate this Contract by giving written notice to Contractor of such termination and specifying the effective date

Contractor's Initials: _____

VIHFA Initials:  _____

thereof, at least thirty (30) days prior to the effective date of said termination. Contractor shall be paid for all authorized services properly performed prior to termination.

- g. Any act of collusion or secret agreements (whether directly or indirectly and verbal or non-verbal) with another person, VIHFA vendor, or a subcontractor of a VIHFA vendor or any construction contractor that results in a secret price fixing, secret rebates, higher pricing, an increase of unnecessary project deliverables and/or working collaboratively to obtain additional financial gain or an unfair advantage for itself and/or that other entity to the disadvantage of VIHFA and/or applicable federal program, if any. As used in this paragraph, "person" means any natural person, joint venture, partnership, corporation, or other business or legal entity. Moreover, the Contractor, its employees, agents, and representatives shall not share, discuss, or disclose pricing any other information on any assigned projects thereto with any third party other than VIHFA, or its designee, to which Contractor is engaged to assist with respect to the services contained herein.

B. Termination for Convenience

This Contract may be terminated, in whole or in part, by VIHFA whenever, for any reason, VIHFA determines that such termination is in its best interest. Termination of services shall be effectuated by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination, but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if cancelled only in part prior to the original termination date. VIHFA will not be liable for services performed after the effective date of termination.

Notwithstanding the above, if termination is required pursuant to any Court Order or legal action related to this contract and/or any procurement for the services contained hereto, and VIHFA determines that such determination is in its best interest, any termination should be effective immediately upon written notice and the Contractor's compensation is limited to any costs approved to date. In no event shall either party be liable to the other, and each party waives the right to sue the other, for any direct, indirect, special, consequential, punitive, or exemplary damages under this agreement.

C. Termination Due to Unavailable Funding

The continuation of this Contract is contingent upon the appropriation and release of federal funds to fulfill the requirements of this Contract. Failure of the appropriate authorities to approve and provide an adequate budget to the VIHFA for fulfillment of

Contractor's Initials: _____

VIHFA Initials:  _____

the Contract terms shall constitute reason for termination for convenience of the Contract by either Party. VIHFA reserves the right to terminate the contract if funding becomes unavailable and Contractor shall be paid for all authorized Services properly performed prior to Termination plus reasonable termination and demobilization costs incurred.

26. PROCEDURE FOR TERMINATION: VIHFA may terminate this Contract at any time by giving at least thirty (30) days prior written notice to the Contractor. Contractor shall be entitled to payment for services performed up to the date of termination contained within the notice, to the extent that the services have been satisfactorily performed and are otherwise reimbursable under the terms of this Contract plus reasonable termination and demobilization costs incurred.

27. FORCE MAJEURE: The Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God, or war, if the event is beyond the Contractor's reasonable control and the Contractor gives notice to the VIHFA promptly upon Contractor's being actually aware of the occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events on their respective duties under the Contract. Contractor may be entitled to an equitable adjustment in schedules in the foregoing circumstances.

28. FALSE CLAIMS:

(1) The Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against VIHFA. The Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under the Virgin Islands law.

(2) The Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. The Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. The Contractor acknowledges that making such false, fictitious, or fraudulent claim is a federal offense.

29. CONFLICT OF INTEREST: The Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to perform under this Contract.

30. WARRANTY OF NON-SOLICITATION: The Contractor expressly warrants that it has not employed any person to solicit or obtain this contract on its behalf, or cause or procure the same to be obtained upon compensation in any manner, contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection hereunder; and that it has not, in estimating the contract price demand , included any sum by reason of such brokerage, commission or percentage, and that all monies payable to it hereunder are free from obligation to any other person for services rendered, supposed to have been rendered, in the procurement of this

Contractor's Initials: _____

VIHFA Initials:  _____

contract. Breach of this warranty shall give VIHFA the right to terminate this Contract or, in its discretion, to deduct from the Contract Cost or consideration the amount of such commission, percentage, brokerage or contingent fees.

31. **PRELIMINARY INSPECTION:** Prior to request for final inspection, the Contractor shall notify VIHFA's Project Manager of the anticipated date of completion so that any major defects or deficiencies may be pointed out to the Contractor for correction prior to the final inspection.

32. **FINAL INSPECTION:** The Scope of Work shall be considered complete upon acceptance by VIHFA after a final inspection conducted by the Architect, if any, and the VIHFA's Project Manager.

33. **MAINTENANCE OF AREA/FINAL CLEAN UP & REMOVAL OF DEBRIS :** Contractor agrees to keep the building and surrounding area reasonably free from rubbish at all times and shall remove debris from the site on a timely basis or when directed to do so by VIHFA. The Contractor must provide onsite refuse container(s) for the use of all contractors. The Contractor must remove rubbish and debris from the building on a daily basis. The Contractor must broom clean the building as required to minimize dust and dirt accumulation.

The Contractor must provide and maintain suitable all-weather access to the building. Before final inspection and acceptance of the building, the Contractor must clean the work area, including glass, hardware, fixtures, masonry, tile, clean and wax all floor(s) (using no corrosive chemicals) as specified, and completely prepare the building for use by VIHFA, with no cleaning required by VIHFA.

34. **RETENTION OF RECORDS:** All records shall be retained for a minimum of three (3) years, unless notified in writing to extend the retention period. Records shall be made available, without charge, for review within ten (10) days of a request by the VIHFA.

35. **NON-DISCLOSURE:** Except for disclosure to VIHFA or its representatives, the reports, work papers and records, including information and data prepared or assembled by the Contractor under this Contract, shall be held confidential by the Contractor and shall not be made available or otherwise disclosed to any third party without the prior written approval of VIHFA unless required to disclose information by order of a court of competent jurisdiction or other administrative authority.

36. **NO COLLUSION:** Contractor shall not collude with other VIHFA vendors / service providers regarding VIHFA business or matters. Contractor shall not enter into any business relationships with other VIHFA service providers regarding VIHFA business or matters, without the approval of VIHFA, which approval may be withheld at VIHFA's sole discretion.

Contractor's Initials: _____

VIHFA Initials: 

37. **COPELAND “ANTI-KICKBACK ACT:** Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland “Anti-Kickback Act” of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable “Anti-Kickback” regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

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

39. **AUTHORIZED REPRESENTATIVE :** The person executing this Contract on behalf of Contractor affirmatively represents that he has the requisite legal authority to enter into this Contract on behalf of Contractor and to bind Contractor to the terms and conditions of this Contract. Both the person executing this Contract on behalf of Contractor and Contractor understand that the Authority is relying on this representation in entering into this Contract.

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

Contractor:

Tropical Fencing, LLC
P.O. Box 244
Kingshill, St. Croix U.S. Virgin Islands 00851
Attention: Luis Saldana, Jr., Owner

Authority:

Virgin Islands Housing Finance Authority
3202 Demarara, No. 3, Suite 200
St. Thomas, U.S. Virgin Islands 00802
Attention: Eugene Jones, Jr., Executive Director

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

41. **TAXES:** Contractor is responsible for payment of all applicable federal and local Territorial taxes, including any taxes of any out-of-state employees who are currently assigned to this project and are working within the Territory.

Contractor’s Initials: _____

VIHFA Initials: _____



(a) GROSS RECEIPT TAXES: Title 33 V.I.C. Ch.3, §44, as amended², requires VIHFA, when making a payment under a contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33 VIC Section 43(a) for each payment for work performed in the Virgin Islands. It is agreed between the Parties that for the purposes of complying with Title 33, Ch. 3, Section 44 of the Virgin Islands Code, VIHFA shall withhold and forward to the Virgin Islands Bureau of Internal Revenue (“VIBIR”) such amount as required by the law at 33 VIC Section 43(a) or any amendments thereto.

(b) The Contractor agrees that the calculation and payment of gross receipts taxes shall be its sole responsibility. VIHFA shall not be responsible in any way for any miscalculation, or additional assessments by the VIBIR resulting from work performed under this Contract. In the unlikely event any overpayment or underpayment is made to the VIBIR, the Contractor shall resolve such matter with VIBIR and inform VIHFA of the resolution thereof.

42. VIHFA FURNISHED RESOURCES: The VIHFA will provide specific project information to the Contractor necessary to complete Services described herein. All records, reports, documents, and other material delivered or transmitted to the Contractor by the VIHFA shall remain the property of the VIHFA and shall be returned by the Contractor to the VIHFA, upon request, at termination, expiration or suspension of this Contract.

All records, reports, documents, or other material or data, including electronic data, related to this Contract and/or obtained or prepared by Contractor, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the Services contracted for herein shall become the property of the VIHFA, and shall, upon request, be returned by Contractor to the VIHFA at termination or expiration of this Contract. Cost incurred by Contractor to compile and transfer information for return to the VIHFA shall be billed on a time basis, subject to the maximum amount of this Contract.

Software and other materials owned by Contractor prior to the date of this Contract and not related to this Contract shall be and remain the property of Contractor.

43. FUND USE: Contractor agrees not to use proceeds from this Contract to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used

² (a) The Government of the Virgin Islands, including its instrumentalities, agencies and public corporations, when making a payment as defined under subsection (b) of this section, to any person, partnership, firm, corporation, or other business association that is subject to the payment of gross receipts tax under the provisions of this title, shall deduct and withhold from such payment gross receipts tax equal to four percent of such payment. Such tax shall be paid to the Virgin Islands Bureau of Internal Revenue within ten days of the last day of the calendar month during which such tax was withheld on forms to be provided by the Virgin Islands Bureau of Internal Revenue.

(b) For purposes of withholding under this section, “payment” is defined as the following:

(1) any single payment of at least \$30,000; and

(2) any payment pursuant to a contract providing for a total expenditure of \$225,000 or more.

Contractor’s Initials: _____

VIHFA Initials: _____



to lobby for or against any proposition or matter having the effect of law or is being considered by the Government of the U.S. Virgin Islands.

Contractor and all Subcontractors shall certify that they have complied with the Byrd Anti Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor and each subcontractor shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award.

44. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to the VIHFA's operation, or gathered pursuant to the Scope of Work to be performed, which are designated confidential by the VIHFA or in the regular course of business and made available to Contractor in order to carry out the Contract, or which become available to Contractor in carrying out the Contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the VIHFA. The identification of all such confidential data and information as well as the VIHFA's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the VIHFA in writing to Contractor. If the methods and procedures employed by Contractor for the protection of Contractor's data and information are deemed by the VIHFA to be adequate for the protection of VIHFA's confidential information, such methods and procedures may be used, with the written consent of the VIHFA, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in Contractor's possession, is independently developed by Contractor outside the scope of this Contract, is obtained from other public agencies, or is rightfully obtained from third parties.

All of the reports, information, and data prepared or assembled by Contractor under this Contract are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the VIHFA. This does not extend to information that was obtained from the public domain such as public agencies or sources of information available to the public.

- i. Contractor must implement procedures to ensure the protection and confidentiality of all data, files, and records involved with this Contract.
- ii. Except as necessary to fulfill the terms of this Contract and with the permission of VIHFA, Contractor shall not divulge to third parties any confidential information obtained by Contractor or its agents, distributors, resellers, subcontractor, officers, or employees in the

Contractor's Initials: _____

VIHFA Initials: _____



course of performing contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the Territory or VIHFA.

- iii. No member, officer, or employee of Contractor, or agents, Subcontractor, member of the governing body of Contractor or the locality in which the program is situated, or other public official who exercises or has exercised any functions or responsibilities with respect to this Contract during his or her tenure agrees not to use or disclose any information concerning a recipient of services under this Contract for any purpose not in conformity with state and Federal law or regulations except upon written consent of the recipient, or his responsible parent or guardian when authorized by law, if applicable.
- iv. Contractor shall notify VIHFA in writing of any disclosure of unsecured confidential information of VIHFA by Contractor, its employees, agents or representatives which is not in compliance with the terms of the Contract (of which it becomes aware). Contractor also shall report to VIHFA any Security Incidents of which it becomes aware, including those incidents reported to Contractor by its sub-construction Managers or agents. For purposes of this Contract, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of VIHFA's or applicant's information in Contractor possession or electronic interference with VIHFA operations; however, random attempts at access shall not be considered a security incident. Contractor shall make a report to VIHFA not more than seven (7) business days after Contractor learns of such use or disclosure. Contractor's report shall identify, to the extent known: (i) the nature of the unauthorized use or disclosure, (ii) the confidential information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by VIHFA's Information Security Manager.

45. **COPYRIGHT:** No materials, to include but not limited to reports, maps, or documents produced as a result of this Contract, in whole or in part, shall be available to Contractor for copyright purposes. Any such material produced as a result of this Contract that might be subject to copyright shall be the property of the VIHFA and all such rights shall belong to the VIHFA.

46. **SEVERABILITY:** In the event that one or more of the provisions of this Contract shall be found unenforceable, illegal or invalid, it shall not affect any other provisions of this Contract, and this Contract shall be construed as if the provision found to be unenforceable, illegal or invalid had never been contained in the agreement, or the unenforceable, illegal or invalid provision shall be construed, amended and/or reformed to be made enforceable, legal and valid.

Contractor's Initials: _____

VIHFA Initials: _____



47. **GOVERNING LAW AND JURISDICTION:** This agreement shall be governed by and construed pursuant to the laws of the United States Virgin Islands. The parties shall submit disputes arising out of or in connection with this agreement to the exclusive jurisdiction of the courts of the United States Virgin Islands.

48. **ENTIRE CONTRACT :** This Contract and any attachments thereto constitute the entire agreement between the parties hereto and all prior understandings or communications, written or oral, with respect to the project that is the subject of this Contract are merged herein. In the event of a conflict or inconsistency between any of the Contract Documents, the conflict or inconsistency shall be resolved by giving precedence in the following order:

1. Any architectural plans applicable to this Contract; then
2. This Contract and all amendments; then
3. Any exhibits and attachments hereto; then
4. The solicitation and any Addenda hereto; and then
5. The A201 General Conditions, if applicable
6. Contractor's proposal.

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

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized representatives on the date(s) written below.

Witnesses:

TROPICAL FENCING, LLC

Witness 1's signature: Malina Maynard

Luis A Saldana, Jr.
Luis Saldana, Jr., Owner

Witness 2's signature: ~~Whitney~~

Dated: 11 / 12 / 2024

Witness 1's signature: Candice Taylor

**VIRGIN ISLANDS HOUSING
FINANCE AUTHORITY**

Eugene Jones, Jr.
Eugene Jones, Jr., Executive Director

Witness 2's signature: Hibannat

Dated: 11 / 21 / 2024

Reviewed for Legal Sufficiency:

Nycole A. Thompson
Nycole A. Thompson, Esq., Legal Counsel

Dated: 11 / 12 / 2024