

PROFESSIONAL SERVICES CONTRACT

This **CONTRACT** is made this 9th day of December, 2024, in the Territory of the United States Virgin Islands, by and between the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**, a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the United States Virgin Islands, whose address is 3202 Demarara Plaza, Suite 200, St. Thomas, U.S. Virgin Islands 00802-6447 (hereinafter referred to as “**VIHFA**”) and **ENCON COMPANY, INC.**, a foreign corporation registered to do business in the U.S. Virgin Islands, whose address is 4605 Tutu Park Mall, Suite 133, PMB 658, St. Thomas, U. S. Virgin Islands 00802 (hereinafter referred to as the “**Contractor**”). Contractor and the VIHFA may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, on September 6, 2017, and on September 19, 2017, Hurricane(s) Irma and Maria (2017 disasters) had a devastating impact on the United States Virgin Islands and caused significant destruction to housing, infrastructure, and the economy; and

WHEREAS, as a result of the 2017 disasters, the VIHFA has also been designated as the lead agency for administering the Community Development Block Grant Disaster Recovery (“CDBG-DR”), which is authorized under the Additional Supplemental Appropriations for Disaster Relief Requirements Act of No. 2017, Public Law (P.L.) 115-56, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, P.L. 115-123; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) awarded \$1,863,742,000.00 of CDBG-DR funds to the U.S. Virgin Islands in two separate tranches. On, February 2, 2018, the first \$242,684,000 was announced for Tranche 1 and on April 10, 2018, an additional \$779,217,000 for Tranche 2; and

WHEREAS, under Public Law (P.L.) 115-56, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, P.L. 115-123, HUD the awarded CDBG-DR funds must be used for the purpose of assisting in addressing unmet needs from the 2017 disasters; and

WHEREAS, on March 1, 2024, the VIHFA issued a Request for Qualifications, RFQ 003-2024-STT-STX to solicit proposals from qualified and licensed firms (“Contractors”) for environmental review, assessments and testing services (as requested) for the VIHFA’s CDBG-DR; and

WHEREAS, the Contractor submitted a proposal which the VIHFA has accepted; and

WHEREAS, the VIHFA selected the Contractor to perform environmental reviews, assessments and testing services for six (6) homes (as requested) for the VIHFA’s CDBG-DR projects.

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

1. SCOPE OF WORK:

The Contractor shall perform, or cause to be performed, the following services:

Task 1 – Environmental Review

- i. Conduct environmental reviews (including site visits, desktop reviews, and required publication notices) on an as needed basis in accordance with the required level of environmental review based on the scope of work provided by the VIHFA.
- ii. Environmental Reviews must, at a minimum, comply with the requirements of Disaster Relief Appropriations Act of 2013, the National Environmental Policy Act (NEPA; including implementing regulations at 40 CFR Part 1500 and 24 CFR Part 58, 24 CFR Parts 55 and 51) along with any Decision-Making Processes for Floodplains and Wetlands, including publication of notices and Territory or local environmental review requirements.
- iii. Create and Environmental Review Record (ERR) meeting the above legal requirements and documenting VIHFA's review and compliance with 24 CFR Part 58 and with the related federal laws and authorities listed in 24 CFR §§58.5 and 58.6.
- iv. The ERR for all levels of environmental reviews prepared by the Contractor shall be certified to support a Request for Release of Funds. The ERR will be maintained as prescribed by VIHFA.
- v. Determine the required level and/or type of environmental review (e.g. Environmental Impact Statement, Environmental Assessment, Categorically Excluded, Tiered Environmental Review).
- vi. At any time that the Contractor has evidence that a further level of environmental review is needed, or that additional compliance assessments or studies are required, the Contractor will advise VIHFA in writing as expeditiously as possible.
- vii. Contractor will be responsible for coordinating with VHFA and necessary regulatory agencies to ensure that all documentation is obtained to document compliance with 24 CFR 58.
- viii. Contractor must have the capability to evaluate based upon the level of the review required and applicable laws, authorities and requirements, the potential environmental impact of proposed activities and to fully document compliance with laws and authorities at §§58.5 and 58.6 as outlined in NEPA and 24 CFR

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Part 58, Part 55 and Part 51 and further explained on the HUD Exchange at <https://www.hudexchange.info/programs/environmental-review/>.

- ix. Contractor must have qualified personnel to perform field inspections as appropriate to document on-site conditions, perform specialized studies as listed in Section 2.2.6 Other Studies, and the ability to perform desktop review using federal, Territorial, and local databases to document compliance.

The following activities are included in this Task, as may be required by VIHFA on a project-by-project basis:

- i. Maintain a contract list of governmental and non-governmental stakeholders for use by VIHFA for distribution or required notices.
- ii. Create required legal notices and provide to VIHFA for publication, e.g. Notice of Intent to Prepare an Environmental Impact Statement (EIS), Notice of Intent to Request a Release of Funds (NOI/RROF) and Finding of No Significant Impact (FONSI), 24 CFR Part 55 and Executive Order 11988 and 11990 Floodplain and Wetland required notices, etc.
- iii. Assist VIHFA in summarizing comments and preparing responses to comments as necessary.
- iv. Create and coordinate summary reports to update VIHFA on each project's status and compliance on environmental review requirements, in a format prescribed by VIHFA.
- v. Initiate and support meetings with VIHFA and other project partners such as other regulatory or resource agencies that may be required to overcome barriers to completing environmental reviews.
- vi. Perform any other duties related to 24 CFR Part 58 HUD Environmental Reviews and other environmental requirements.

Task 2 – Asbestos Testing

The specific services of the Contractor under this task include the performance of Pre-Construction Asbestos Containing Material (ACM) assessments in accordance with federal and territorial regulatory standards.

- i. Asbestos testing services consist of the survey, identification, and assessment of the condition of asbestos and ACM, the recording and reporting thereof, and the collection of bulk samples of asbestos or suspected ACM for laboratory analysis.
- ii. Contractor is required to adhere to any regulations promulgated by the Department of Labor (DOL). The Contractor is expected to be fully familiar with these regulations, as well as related federal regulations such as 40 CFR Part 763 (Asbestos Containing Material in Schools), 40 CFR Part 1926.1101 (Construction) and 40 CFR Part 61 (Subpart M) (Hazardous Air Emissions), as may be applicable.

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- a. Testing for ACM requires the Contractor to deploy a certified asbestos inspector. The inspector will perform asbestos surveys of both visual and written inspection of the location, quantity, friability, condition of suspected ACM and the collection of samples from suspected ACM utilizing sampling methods found in 40 CFR 763.
- b. The Contractor will take photographs deemed necessary by the inspector to document the location and condition of suspected ACM. The Contractor will not be responsible for repair or finishing activities resulting from survey and testing activities. Suspected ACM that cannot be sampled due to site conditions will be presumed to contain asbestos. Presumed ACM will then be sampled prior to construction activities once the identified hazard has been abated. If testing results indicate suspected material is ACM, the material will be treated accordingly. If ACM is to be distributed in connection with VIHFA-funded activities, it must be conducted under the supervision of a certified contractor through the USVI Department of Planning and Natural Resources pursuant to applicable Federal and Territory regulations.

Task 3 – Lead-Based Paint Testing

The specific services of the Contractor under this task include the performance of inspections and risk assessments for lead-based paint hazards in accordance with federal and territory regulatory standards.

- i. Lead-based paint testing services consist of a surface-by-surface investigation to determine the presence of lead-based paint, identification, and assessment of the condition of lead-based paint (LBP), the recording and reporting thereof, and the collection of (dust and soil) samples for laboratory analysis.
- ii. Contractor is required to adhere to any regulations promulgated by the Department of Labor (DOL).
- iii. Contractor is expected to be fully familiar with these regulations, as well as related federal regulations such as 24 CFR Part 35 (Lead-Based Paint Poisoning Prevention in Certain Residential Structures), and 40 CFR Part 1926.62 (Construction), as may be applicable.
- iv. Testing for LBP requires the Contractor to deploy a certified LBP inspector/risk assessor.
- v. The inspector/risk assessor will perform an assessment consisting of (1) an on-site investigation to determine the existence, nature and severity, source and location of LBP hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing LBP hazards, and the collection of (dust and soil) samples utilizing sampling methods found in 24 CFR Part 35, Subpart R.

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- vi. Contractor will take photographs deemed necessary by the inspector to document the location and condition of suspect LBP.
- vii. Suspected LBP that cannot be sampled due to site conditions will be presumed to contain lead. Presumed LBP will be sampled prior to construction activities once the hazard has been abated. If testing results indicate suspected material in LP, the material will be treated accordingly. If LBP is to be disturbed in connect with VIHFA-funded activities, it must be conducted by personnel certified to perform such activities as abatement supervision, or renovation, in accordance with 40 CFR Part 745, Subpart Q, or by the EPA, in accordance with 40 CFR Part 745, Subpart E or L, pursuant to applicable Federal and Territory regulations.

2. **TERM:** This Contract shall begin on the 10th day of December, 2024 and shall end on or about 20th day of December, 2024. The VIHFA may elect to exercise the option reserves the right to modify and/or terminate the contract if the Contractor fails to perform in a manner consistent with the terms of the contract. In addition, the VIHFA reserves the right to modify and/or terminate the contract if funding becomes available.

3. COMPENSATION:

(a) The VIHFA, in consideration of the Contractor's satisfactory performance of the Scope of Work described above shall pay the Contractor as compensation for the services rendered under this contract an amount not to exceed **Fifteen Thousand (\$15,000.00)** pursuant to the terms as set forth in Appendix A. Contractor shall submit invoices for work performed that conform to the tasks assigned. Contractor shall submit monthly invoices to VIHFA for payment. It is expressly understood and agreed that in no event shall the amounts that the VIHFA pays to the Contractor under this Contract exceed the amount and conditions made a part of this Contract unless expressly agreed to in writing.

(b) VIHFA's performance and obligation to pay under this Contract is contingent upon the availability of applicable funding. VIHFA shall be the final authority regarding the availability of funds for this Contract and what constitutes "applicable funding" to complete this Contract. If any such funds are not made available for the Contract purpose, such an event will not constitute a default on VIHFA. VIHFA will notify Contractor in writing at the earliest possible time if funds are not appropriated or available. Upon notification, VIHFA shall pay Contractor for all work performed to date under the Scope of Work, and Contractor will stop work immediately. The cost for services rendered under this Contract to be paid is not eligible for reimbursement from any other funding source.

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4. BILLING: The Contractor shall submit monthly invoices to the Authority for services performed by the Contractor during each billing period. Payment of each invoice shall be due thirty (30) days following receipt of the invoice. Invoices shall be forwarded to the following contact and address:

Monifa Evans
Acting Director of Finance – CDBG-DR
Virgin Islands Housing Finance Authority
1110 Beltjen Road, Suite 200
St. Thomas, U.S. Virgin Islands 00802
mevans@vihfa.gov

- a. Full or partial payment will be made upon satisfactory completion of each invoice as accepted by the Project Manager within thirty (30) days of the receipt date of the invoice. VIHFA will notify the Contractor of any disputed charges within fifteen (15) days of the receipt date of the invoice. Contractor and VIHFA will work in good faith to resolve any discrepancies within ten (10) days after notification. Should a discrepancy result in partial rejection of any item(s) invoiced, the VIHFA shall proceed with partial payment within thirty (30) days of the receipt date of the invoice.
- b. Indemnification: Should the Contractor, after receipt of payment of invoices from the VIHFA fail to pay in a timely manner all persons who have fulfilled their obligations to perform labor and/or furnish materials in the prosecution of the work provided herein, including by way of example Contractor's employees, subcontractors and furnishers of materials, machinery, equipment or fixtures, the Contractor agrees to indemnify VIHFA from said payment(s). Timely payments from the Contractor to its subcontractors and vendors shall mean within seven (7) business days of receiving payment from VIHFA.
- c. In the event that performance standards required herein are not being met by the Contractor, VIHFA will notify the vendor in writing of such performance deficiencies. Upon receipt of a written letter, the Contractor would be required to prepare and submit a proposal to VIHFA outlining ways to correct the problem and improve service. Once the proposal is submitted and accepted by the VIHFA, the Contractor would have thirty (30) days to improve its performance.
- d. If VIHFA does not issue a payment of an invoice, through no fault of the Contractor, within fifteen (15) days after the date established in the Contract, then the Contractor may, upon three (3) additional days' notice to VIHFA, stop Work until payment of the amount owing has been received.

5. FORCE MAJEURE: The Contractor shall not be held responsible for delay or default

Contractor's Initials: *RU*

Authority's Initials: 

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 upon 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 shall be entitled to an equitable adjustment in schedules and unit prices in the foregoing circumstances.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS BY CONTRACTOR:

The Contractor represents, warrants, and covenants as follows:

(a) Contractor is duly organized and existing and authorized, qualified, and licensed to do business in the U.S. Virgin Islands.

(b) Contractor will, during the term of this Contract remain in good standing and qualified to do business under the laws of the U.S. Virgin Islands, including maintenance at all times of a valid business license.

(c) Contractor will not cease doing business, dissolve or otherwise dispose of all or substantially all of Contractor's 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 Contractor without the prior written consent of the Authority.

(d) Contractor 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.

(e) 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.

(f) No information, statement, or report furnished in writing by the Contractor in connection with the negotiation of, or performance under, this Contract 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.

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

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

7. CONTRACTOR RESPONSIBILITY: Contractor shall supervise and direct the work of its employees. The Contractor agrees to maintain the professional standards applicable to its profession. The Contractor shall be responsible for its performance and that of its vendors. Unless otherwise specified in this Contract, the Contractor will provide for and/or pay for all labor, materials, equipment, tools, machinery, transportation, and other goods, facilities, and services necessary for the proper execution and completion of the work in this Contract.

8. PROFESSIONAL STANDARDS: The Contractor will complete all work in accordance with standard practices in the industry and the work shall conform with any and all law and regulations which apply to the work being performed, whether or not explicitly covered in the Contract. Contractor warrants that the final product of Contractor's work shall be fit for the purposes for which it is intended.

9. 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. The Contractor shall be responsible for the supervision of its employees, subcontractors, and authorized representatives. All workers must be competent and skilled in their work.

10. USE OF SUBCONTRACTORS: The Contractor is the single Prime Contractor and shall be responsible for contract performance as specified in this Contract whether subcontractors are utilized. This general requirement notwithstanding, Contractor may enter into subcontractor arrangements. However, Contractor has total responsibility for the entire contract. If the Contractor intended to subcontract for portions of the work, the Contractor shall have identified in its RFP Response any subcontractor relationships and include specific designations of the tasks to be performed by the subcontractor. 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 the VIHFA. Unless provided for in the contract with the VIHFA or set forth in the RFP Response, the Contractor shall not contract with any other party for any of the services herein contracted without the express prior 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.

11. ASSIGNMENT: Unless as otherwise set forth in this Contract, the Contractor shall not subcontract or assign this contract without the prior written consent of the Authority.

Contractor's Initials: RW

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12. **RETENTION OF RECORDS:** All records shall be retained for a minimum of three (3) years from the termination or expiration of this Contract, 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.

13. **OWNERSHIP OF DATA:** VIHFA will retain ownership of any data, information or intellectual property furnished to Contractor in connection with this Contract. VIHFA will own any reports, data, or other information that results from the services to be performed, including without limitation GIS updates (in both machine-readable form and in source code form), raw data, and other information, used to perform environmental reviews, assessments and testing services. Contractor shall provide information on a regular basis at no additional cost for the transmittal or upload of any requested data or information.

14. **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.

15. **INDEMNIFICATION:** Each Party (the “Indemnifying Party”) shall be fully liable for the actions of its agents, employees, partners or sub-contractors and shall fully indemnify, hold harmless, and defend the other Party, its director, owners, agents, and employees, from and against any and all claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys and other fees, asserted by third parties (“Claims”), which Claims are caused by or arise from the services performed by the Indemnifying Party, its agents, employees, partners or sub-contractors..

16. **INSURANCE:** The Contractor shall provide the VIHFA with evidence of all appropriate and applicable insurance coverage carried by the Contractor, including policy coverage periods. The Contractor shall furnish the VIHFA with certificates of insurance, showing that the following insurance is in force and will insure all operations.

- **General Liability Insurance** – Contractor shall obtain, maintain, and provide the Authority with proof that it has in place General Liability Insurance in an amount no less than **Five Hundred Thousand (\$500,000.00) Dollars**. The insurance policy shall name the VIHFA as Certificate Holder and an “Additional Insured” via an endorsement as follows:

Virgin Islands Housing Finance Authority
1110 Beltjen Road, Suite 200

Contractor's Initials: RW

Authority's Initials: 

of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

19. RIGHT TO WITHHOLD: If work under this Contract is not performed in accordance with the terms hereof, the Authority shall duly notify Contractor in writing of the deficiencies causing the non-performance. Contractor shall have thirty (30) days to remedy the deficiencies. After thirty (30) days, if the deficiencies have not been remedied, the Authority will have the right to withhold any payment due to Contractor associated with the deficiencies until such time as the deficiencies are cured. The Authority will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

20. 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:

- i. The violation of any of the material terms or conditions of this Contract.
- ii. The making of any material misrepresentation by the Contractor in the furnishing of any information to the VIHFA.
- iii. Repeated failure to comply with rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and guidelines, policies or directive as may be applicable at any time.
- iv. Failure due to Contractor's negligence or wilful misconduct of Contractor to fulfill in a timely and proper manner the obligations under this Contract.
- v. Continual submission by Contractor or reports to VIHFA or HUD, or their auditors, 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
- vi. 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 reasonable written notice to Contractor of such termination and specifying the effective date 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.

Contractor's Initials: RW

Authority's Initials: [Signature]

B. Termination for Convenience:

The continuation of this Contract is contingent upon the appropriation and release by HUD of disaster recovery funds to fulfill the requirements of this Contract. Failure of HUD to approve and provide an adequate budget to the VIHFA for fulfillment of the Contract terms shall constitute reason for termination for convenience of the Contract by either Party.

C. Termination Due to Unavailable Funding

VIHFA reserves the right to terminate the Contract if HUD disaster recovery funding becomes unavailable. Contractor shall be paid for all authorized services properly performed prior to termination plus reasonable termination and demobilization costs incurred.

D. Procedure for Termination:

VIHFA may terminate this Contract at any time by giving at least sixty (60) days' prior written notice to the other Party. 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.

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

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

23. **CONFLICT OF INTEREST:** 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.

24. **WARRANTY OF NON-SOLICITATION:** 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 way, 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

Contractor's Initials: *RW*

Authority's Initials: *[Signature]*

consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by Contractor 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 Contract. Breach of this warranty shall give the Authority the right to terminate this Contract, or in its discretion, to deduct from the Contract price or consideration the amount of such commission, percentage, brokerage or contingent fees.

25. **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:

Authority: Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200,
St. Thomas U.S. Virgin Islands 00802
Attention: Eugene Jones, Jr., Executive Director

Contractor: Encon Company, Inc.
4605 Tutu Park Mall, Suite 133
PMB 658
St. Thomas, U.S. Virgin Islands 00802
Attention: Gregory W. Sharp

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.

26. **GOVERNING LAW AND VENUE:** This Contract shall be governed by and construed in accordance with the laws of the Territory of the United States Virgin Islands (without regard to any conflict of law provisions). Venue for any action between the Authority and Contractor which relates to this Contract shall be in the United States Virgin Islands.

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

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

Contractor's Initials: RW

Authority's Initials: 

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, caused these presents to be executed as of the day and date first written above.

WITNESS:

Signature: Luzmarie Lopez

Print Name: Luzamarie Lopez

WITNESS: Kameron Sharp
Signature: _____

Print Name: Kameron Sharp

Reviewed for Legal Sufficiency:
Vanessa Hewitt-Quinland
Vanessa Hewitt-Quinland, Esq.
Special Counsel
Date: November 13, 2024

WITNESS:

Signature: Claudia Parson

Print Name: Claudia Parson

WITNESS:

Signature: Nadaisha Sheriff

Print Name: Nadaisha Sheriff

ENCON COMPANY, INC.

Rolando Watley
Rolando Watley
Owner

DATE: 12/1/2024

VIRGIN ISLANDS HOUSING
FINANCE AUTHORITY

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

DATE: 12/9/2024

Contractor's Initials: RW

Authority's Initials: _____

EXHIBITS AND ATTACHMENTS

EXHIBIT 1: VI Business License

APPENDIX A: HUD Provisions

Contractor's Initials: RW

Authority's Initials: 



THE GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF LICENSING AND CONSUMER AFFAIRS
BUSINESS LICENSE

KNOW ALL BY THIS PRESENT

That, in accordance with the applicable provisions of Title 3 Chapter 16 and Title 27 V.I.C. relating to the licensing of businesses and occupations, and compliance having been made with the provisions of 10 V.I.C. Sec. 41 relating to the Civil Rights Act of the Virgin Islands, the following license is hereby granted.

Licensee:	ENCON COMPANY INC.		
Trade Name:	ENCON COMPANY INC.		
Mailing Address			Physical Address
4605 TUTU PARK MAL, SUITE 133 PMB 658 ST. THOMAS ST. THOMAS VI 00802			7405 ESTATE BOVONI 4B-B ST. THOMAS ST. THOMAS VI 00802
Business No:	61196	License No:	1-61196-1L
Types of License(s) Hazardous Waste Service			

As provided by law, the authorized licensing authority shall have the power to revoke or suspend any License issued hereunder, upon finding, after notice and adequate hearing, that such revocation or suspension is in the public interest; provided, that any persons aggrieved by any such decision of this office shall be entitled to a review of the same by the Territorial Court upon appeal made within (30) days from the date of the decision; provided, further, that all decisions of this office hereunder shall be final except upon specific findings by the Court that the same was arrived at by fraud or illegal means.

2024

If a renewal is desired, the holder is responsible for making application for same without any notice from this office. It is the responsibility of the Licensee to notify the Department in writing within (30) days, when a license is to be cancelled or placed in inactive status. Failure to do so will result in the assessment of penalties as authorized by law.

Valid from 05/01/2024 until 05/31/2025
Printed on 05/16/2024
Issued at St. Thomas, V.I.
Fee 130.00

H. Nathalie Hodge
Commissioner, Department of Licensing and Consumer Affairs

THIS LICENSE MUST BE PROMINENTLY DISPLAYED AT PLACE OF BUSINESS

APPENDIX A

HUD GENERAL PROVISIONS (“HUD RIDER”)

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development (“HUD”). In addition, Contractor/Subcontractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>.

1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then, upon the application of either Party, the Agreement shall forthwith be amended in writing to make such insertion or correction.

2. STATUTORY AND REGULATORY COMPLIANCE

Contractor/Subcontractor shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by the Disaster Relief Appropriations Act, 2017 (Pub. L. 115-56) and the Bipartisan Budget Act of 2018 (“BBA”), (Pub. L. 115-123), including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

3. BREACH OF CONTRACT TERMS

VIHFA reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

4. REPORTING REQUIREMENTS

The Contractor/Subcontractor shall complete and submit all reports, in such form and according to such schedule, as may be required by VIHFA. The Contractor/Subcontractor shall cooperate with all VIHFA efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

5. ACCESS TO RECORDS

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Subcontractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least three (3) years following the date of final payment and close-out of all pending matters related to this contract.

7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The Contractor/Subcontractor will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

9. ENERGY EFFICIENCY

The Contractor/Subcontractor shall comply with mandatory standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

10. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

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

The Contractor/Subcontractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

12. SECTION 504 OF THE REHABILITATION ACT OF 1973

The Contractor/Subcontractor shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 94), as amended, and any applicable regulations.

The Contractor/Subcontractor agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

13. AGE DISCRIMINATION ACT OF 1975

The Contractor/Subcontractor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

14. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor/Subcontractor represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

15. CONFLICTS OF INTEREST

The Contractor/Subcontractor shall notify VIHFA as soon as possible if this contract or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Contractor/Subcontractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor/Subcontractor shall provide VIHFA any additional information necessary for VIHFA to fully assess and address such actual or potential conflict of interest. The Contractor/Subcontractor shall accept any reasonable conflict mitigation strategy employed by VIHFA, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

16. SUBCONTRACTING

When subcontracting, the Contractor/Subcontractor shall solicit for and contract with such Contractor/subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,

- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

The Contractor/Subcontractor represents to VIHFA that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

17. ASSIGNABILITY

The Contractor/Subcontractor shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of VIHFA.

18. INDEMNIFICATION

The Contractor/Subcontractor shall indemnify, defend, and hold harmless VIHFA and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor/Subcontractor in the performance of the services called for in this contract.

19. COPELAND “ANTI-KICKBACK” ACT (Applicable to all construction or repair contracts)

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.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

The Contractor/Subcontractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

21. DAVIS-BACON ACT

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation)

The Contractor/Subcontractor shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

22. TERMINATION FOR CAUSE

If, through any cause, the Contractor/Subcontractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor/Subcontractor shall violate any of the covenants, agreements, or stipulations of this contract, VIHFA shall thereupon have the right to terminate this contract by giving written notice to the Contractor/Subcontractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor/Subcontractor under this contract shall, at the option of VIHFA, become VIHFA's property and the Contractor/Subcontractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor/Subcontractor shall not be relieved of liability to VIHFA for damages sustained by VIHFA by virtue of any breach of the contract by the Contractor/Subcontractor, and VIHFA may withhold any payments to the Contractor/Subcontractor for the purpose of set-off until such time as the exact amount of damages due to VIHFA from the Subcontractor is determined.

23. TERMINATION FOR CONVENIENCE

VIHFA may terminate this contract at any time by giving at least thirty (30) days' notice in writing to the Contractor/Subcontractor. If the contract is terminated by VIHFA as provided herein, the Contractor/Subcontractor will be paid for the time provided and expenses incurred up to the termination date.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973

The Contractor/Subcontractor shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers with Disabilities

- A.** The Contractor/Subcontractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor/Subcontractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
- i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
- B.** The Contractor/Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- C.** In the event of the Contractor/Subcontractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- D.** The Contractor/Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's/Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor/Subcontractor must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor/Subcontractor may have the notice read to a visually disabled individual or may lower the posted notice so that it might be read by a person in a wheelchair).
- E.** The Contractor/Subcontractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor/Subcontractor is bound by the terms of section 503 of the Rehabilitation

Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.

- F.** The Contractor/Subcontractor will include the provisions of this clause in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. EXECUTIVE ORDER 11246

The Contractor/Subcontractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 C.F.R. chapter 60).

During the performance of this contract, the Contractor/Subcontractor agrees as follows:

- A.** The Contractor/Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/Subcontractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B.** The Contractor/Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor/Subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C.** The Contractor/Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D.** The Contractor/Subcontractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E.** The Contractor/Subcontractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F.** The Contractor/Subcontractor will furnish all information and reports required by Executive

Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- G. In the event of the Contractor's/Subcontractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor/Subcontractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- H. Contractor/Subcontractor shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such contractor/subcontractor. The Contractor/Subcontractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor/Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor/Subcontractor certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor/Subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS

The Contractor and all its subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 et seq., the Federal Water Pollution Control Act, as amended,

33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency (EPA) with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A.** A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the EPA pursuant to 40 C.F.R. Part 15, as amended.
- B.** Agreement by the Subcontractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C.** A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- D.** Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. **LOBBYING**

The Contractor/Subcontractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor/Subcontractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor/Subcontractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

29. BONDING REQUIREMENTS

The Contractor/Subcontractor shall comply with VIHFA bonding requirements, unless they have not been approved by HUD, in which case the Contractor/Subcontractor shall comply with the following minimum bonding requirements:

- (1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of its 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.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

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

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

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

- B.** The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. part 75 , which implementsection 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C.** The Subrecipient/Contractor agrees to identify all those individuals that will be working on the construction jobs by name, address, job title and wage rate. They also agree to certify those individuals who are Section 3 workers or Targeted Section 3 workers per the definition in 24 CFR Part 75
- D.** The Subrecipient/Contractor agrees to send to each labor organization or representative of workers with which the *General Contractor*/Subcontractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the General Contractor’s commitments under thissection 3 clause, and will post copies of the notice in conspicuous places at the work site where both employeesand applicants for training and employment positions can see the notice. The notice shall describe the section3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- E.** The Subrecipient / Contractor agrees to include this section 3 clause in every contract, subcontract and procurement documents subject to compliance with regulations in 24 C.F.R. part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 75. The General Contractor will not subcontract with any subcontractor where the subcontractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 75. .
- F.** Noncompliance with HUD’s regulations in 24 C.F.R. part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

31. FAIR HOUSING ACT

Subrecipient/*Contractor* shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Please visit http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11868.pdf for more information.

32. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended, was signed with the intent of reducing wasteful government spending and providing citizens with the ability to hold the government accountable for spending decisions. 2 C.F.R. Part 170 outlines the requirements of recipients in reporting information on subawards and executive total compensation under FFATA legislation. Any non-Federal entity that receives or administers Federal financial assistance in the form of: grants, loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, assessed and voluntary contributions; and/or other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal fund, is subject to these requirements.

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

33. PROCUREMENT

The Uniform Guidance procurement requirements (2 C.F.R. Part 200, Subpart D) went into effect on July 1, 2018. These requirements are applicable to CDBG-DR funded projects, or as provided by 83 Federal Register 5844 VI A(1)(b)(2) permits a state grantee to elect to follow its own procurement policy. These policies and procedures ensure that Federal dollars are spent fairly and encourage open competition at the best level of service and price. Standards for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services are outlined in Title 31, Chapter 23, Sections 231-251 of the Virgin Islands Code and Title 31, Chapter 23, of the Virgin Islands Regulations.

34. CHANGE ORDERS TO CONTRACTS

Change orders are issued when the initial agreed upon pricing or work to be completed requires modification. First, the contractor must complete a Change Order Request Form. This form and supporting documentation must be delivered to the Project Manager for review. Each change order must have a cost analysis. Once the Project Manager approves the change order, it is returned to the contractor for execution. Change orders are only invoiced on the final draw and categorized as "change order." The amount listed on the invoice must match the previously approved amount and must be cost reasonable. The Project Manager is responsible for verifying cost reasonableness. Verification documentation for cost reasonableness becomes an attachment to the change order.

35. ENVIRONMENTAL REVIEW

Every project undertaken with Federal funds, and all activities related to that project, is subject to

the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 C.F.R. Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any Federal funds can be accessed for program-eligible activities.

The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.

36. LEAD BASED PAINT

All housing units assisted using CDBG-DR funds must comply with the regulations regarding lead-based paint found at 24 C.F.R. Part 35- LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES.

37. ENVIRONMENTAL REVIEW RECORD

The Environmental Officer is responsible for maintaining a written record of the environmental review process. The ERR for all programs contains all the governmental review documents, public notices and written determinations or environmental findings required by 24 C.F.R. Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES as evidence of review, decision making and actions pertaining to a project of a recipient.

38. FLOOD INSURANCE REQUIREMENTS

Grantees and subrecipients of Federal funding must ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605- NATIONAL FLOOD INSURANCE PROGRAM and 24 C.F.R. § 570.202- ELIGIBLE REHABILITATION AND PRESERVATION ACTIVITIES.

39. DUPLICATION OF BENEFITS

CDBG-DR funding intends to address the unmet needs of a community. The funds are supplemental to primary forms of assistance, including private insurance and FEMA funds. The Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. § 5121 et seq., established the requirements for Duplication of Benefits (DOB) analysis.

40. ANTI-FRAUD, WASTE AND ABUSE CHECKS

The Anti-Fraud, Waste and Abuse (AFWA) check is designed to identify discrepancies and risk-relevant issues in Applicant-provided information that may be indicative of fraud, waste, and/or abuse.

41. AFFIRMATIVELY FURTHERING FAIR HOUSING

The Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, et seq., dictates that grantees are required to administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Per the regulations of 24 C.F.R. § 570.601 and in accordance with Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 et seq., for each community receiving a grant under Subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's Assessment of Fair Housing (AFH) plan, conducted in accordance with the requirements of 24 C.F.R. §§ 5.150-5.180 (Affirmatively Furthering Fair Housing) and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

42. DRUG FREE WORKPLACE

The Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 81, as implemented by 24 C.F.R. § Part 24, Subpart F, §§ 983.251-983.262, requires that any grantee other than an individual must certify that it will provide a drug-free workplace. Any grantee found in violation of the requirements of this act may be subject to suspension of payments under the grant, suspension or termination of the grant or suspension or debarment of the grantee.

43. TIMELY DISTRIBUTION OF FUNDS

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), approved September 8, 2017 (Appropriations Act), as amended, requires that funds provided under the Act be expended within two (2) years of the date that HUD obligates funds to a grantee unless otherwise authorized via waiver of this requirement by the Office of Management and Budget (OMB). The OMB waived the two (2) year expenditure requirement under 83 Fed. Reg. 40314 (Aug. 14, 2018); however, the provision to expend one hundred percent (100%) of the total allocation of CDBG-DR funds on eligible activities within six (6) years of HUD's initial obligation of funds remains in effect. The six (6) year expenditure period commences with the initial obligation of funds provided under 83 Fed. Reg. 5844 (Feb. 14, 2018). Additionally, per 83 Fed. Reg. 5844, the provisions at 24 C.F.R. §§ 570.494 and 570.902, regarding timely distribution and expenditure of funds, are waived and an alternative requirement was established.

Furthermore, consistent with 31 U.S.C § 1555 and OMB Circular No. A-11 (2017), if the Secretary of HUD or the President of the United States determines that the purposes for which the appropriation was made have been carried out and no disbursement has been made against the appropriation for two (2) consecutive fiscal years, any remaining unobligated balance shall be canceled and will be made unavailable for obligation or expenditure for any purpose.

44. PROPERTY MANAGEMENT AND DISTRIBUTION

Regulations governing property management and distribution of real property, equipment, financial obligations and return of un-obligated cash post program closeout can be found in 24 C.F.R. § 570.506, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343 and 2 C.F.R. § 200.344(b). The standards of 24 C.F.R. § 570.506 apply to any real property under a CDBG award recipient's control acquired in whole or in part with CDBG funds in excess of \$25,000.00. The recipient may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.208 or if not, the recipient may either retain or dispose of the property

for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

45. LIMITED ENGLISH PROFICIENCY

Executive Order No. 13166, signed on August 11, 2000, requires programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or deaf/hard of hearing. Fair access is ensured through the implementation of a Language Assistance Plan (LAP), which includes non-English-based outreach, translation services of vital documents, free language assistance services, and staff training. Vital documents are defined as depending on the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

46. PERSONALLY IDENTIFIABLE INFORMATION

In accordance with 2 C.F.R. § 200.303, regarding internal controls of a non-Federal entity, a grantee must guarantee the protection of all Personally Identifiable Information (PII) obtained. The program will enact necessary measures to ensure PII of all applicants is safeguarded as to avoid release of private information. If a contractor or employee should experience any loss or potential loss of PII, the program shall be notified immediately of the breach or potential breach.

47. UNIFORM RELOCATION ACT

CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA or Uniform Act), as amended. 49 C.F.R. § Part 24 requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses.

48. RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN. Per Section 104(d) of the Housing and Community Development Act of 1974 § 42.325

(a) Certification.

- (1) As part of its consolidated plan under 24 CFR Part 91, the recipient must certify that it has in effect and is following a residential anti-displacement and relocation assistance plan.
- (2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential anti-displacement and relocation assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

(b) Plan contents.

- (1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in Parts 92 and 570 of this title, to minimize the displacement of

families and individuals from their homes and neighborhoods as a result of any assisted activities.

(2) The plan shall provide for relocation assistance in accordance with § 42.350.

49. COMPLAINTS AND APPEALS

Citizen comments on VIHFA's published Action Plan, any substantial amendments to the Action Plan, performance reports and/or other issues related to the general administration of CDBG-DR funds are welcomed throughout the duration of the grant. The Citizen Participation Plan is posted as a stand-alone document at www.vihfa.gov. Complaints regarding fraud, waste, or abuse of government funds shall be addressed to the HUD Office of Inspector General Fraud Hotline by phone: 1-800-347-3735 or email: hotline@hudoig.gov.

50. MONITORING

As per CDBG regulation, 24 C.F.R. § 570.501(b), grantees of CDBG-DR funds are responsible for carrying out their programs to meet compliance with CDBG Program, statutory and regulatory requirements, including monitoring their project administrators, contractors, and subcontractors. As such, throughout the application, planning, design, and implementation phase of the program, VIHFA will conduct internal monitoring of processes, procedures, policy, applications, planning, design, construction, and other applicable phases.

51. PROCUREMENT OF RECOVERED MATERIALS

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.