

**VIRGIN ISLANDS HOUSING FINANCE AUTHORITY  
SUBRECIPIENT AGREEMENT No.: SA-MIT VIAF)-006-2025**

**PROGRAM:  
ECONOMIC RESILIENCE AND REVITALIZATION**

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***BETWEEN***

**VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**

**[Grantee]**

**AND**

**VI AQUA FARM, LLC**

**[Subrecipient]**

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This SUBRECIPIENT AGREEMENT (“Agreement”) for the use of the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY (“VIHFA”) COMMUNITY DEVELOPMENT BLOCK GRANT-DISASTER RECOVERY (CDBG-MIT) funds** is entered into this \_\_\_ day of, 2025 in the Territory of the United States Virgin Islands between the **Virgin Islands Housing Finance Authority (“Grantee”)**, a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the Virgin Islands by the name of **the Virgin Islands Housing Finance Authority, hereinafter “Authority,” located at 3202 Demarara Plaza, Suite 200, St. Thomas, USVI 00802,** and **VI Aqua Farm, LLC a (“Subrecipient”) located at 7-1 VI Corp Lands, Estate Jealousy, Frederiksted, St. Croix, 00840.** Grantee and Subrecipient are herein jointly referred to as the “Parties”; and

**I. RECITALS**

**WHEREAS**, in the aftermath of Hurricane(s) Irma and Maria, the United States Congress, through the Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017, Public Law (P.L.) 115-56, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2018, P.L. 115-123, appropriated approximately Thirty-Eight Billion Dollars (\$38,000,000,000) to the U.S. Department of Housing and Urban Development (“HUD”) to be allocated as disaster recovery community development block grants among States, Puerto Rico and the United States Virgin Islands (“USVI”) and other eligible government entities to provide crucial funding for recovery efforts involving housing, infrastructure, economic development, and the prevention of further damage to affected areas; and

**WHEREAS**, the USVI submitted to HUD, and on July 10, 2018, HUD approved a “Community Development Block Grant Disaster Recovery Action Plan (“Action Plan”), detailing a range of Projects to address the Virgin Island’s substantial unmet needs and recovery relief after Hurricanes Irma (FEMA-4335-DR) and Maria (FEMA-4340-DR); and

**WHEREAS**, based on the approved Action Plan, the USVI has received HUD Community Development Block Grant Disaster Recovery funding (“CDBG-MIT”) for hurricane disaster recovery; and

**WHEREAS**, pursuant to 83 FR 5844 (February 9, 2018) the USVI received the first allocation of \$242,684,000; and pursuant to 83 FR 40314 (August 14, 2018) the USVI received a second allocation of \$779,217,000; and pursuant to FR-6109-N-03 (September 4, 2019) and FR- 6109-N-02 (August 30, 2019), the USVI received a third allocation of \$744,188,000, to address USVI’s substantial unmet needs and recovery relief after Hurricane(s) Irma and Maria; and

**WHEREAS**, on September 27, 2018, the USVI executed Grant Agreement No. 1, B-17-DM-78-0001 and on February 10, 2020, the USVI executed Grant Agreement No. 2, B-18-DP-78-0001, with HUD, to use CDBG-MIT funds for the necessary expenses related to disaster relief projects, long-term recovery, restoration of housing, infrastructure, and economic revitalization in the impacted and distressed areas in the USVI; and

**WHEREAS**, the VIHFA is the Administrator of the CDBG-MIT funds; and

**WHEREAS**, the purpose of this Agreement is to set forth the terms and conditions by which the Grantee will provide the Subrecipient with the CDBG-MIT Project funding for the Subrecipient’s use in the implementation of the designated *Projects*, as outlined in the Action Plan, approved by HUD, as well as any ensuing Amendments to the Action Plan (approved by HUD); and

**WHEREAS**, pursuant to the terms and conditions set forth in this Agreement, including the Appendices hereto, implementation of the specific Projects described in the approved Action Plan will be undertaken by the Subrecipient; and

**WHEREAS**, implementation of the Action Plan Projects shall be undertaken in compliance with Federal and territorial laws and regulations as well as the requirements of the CDBG-MIT Project and federal cross-cutting requirements including the National Environmental Policy Act of 1969 ("NEPA"), as amended; and

**WHEREAS**, activities undertaken under this Agreement and benefits determined for the Subrecipient shall not duplicate Projects or benefits provided to the USVI through other Federal recovery Projects, private benefits or benefits gained from non-profit entities, including those run by the Federal Emergency Management Agency ("FEMA"), and coordinated with such resources; and

**WHEREAS**, the Subrecipient will manage all project(s) for the Grantee with an approved budget of Funds for this project will be allocated from:

**Grant Agreements No.**

**WHEREAS**, the Parties wish to set forth, in this Agreement, their mutual understanding regarding their respective roles and responsibilities in implementing the activities set forth in the Action Plan and any Action Plan Amendments that may ensue.

**WHEREAS**, CDBG-MIT funds are made available for use to the Subrecipient under this the Subrecipient Agreement requires that use of funding must be in accordance with the Action Plan, and any subsequent amendments, requirements imposed by Federal statutes, regulations, and the terms and conditions of the CDBG-MIT Federal Grant Award.

**NOW THEREFORE**, in consideration of the principles, assurances and promises contained herein, the Virgin Islands Housing Finance Authority and the Public Finance Authority, Office of Disaster Recovery hereby agrees on the following terms and conditions to govern administration, implementation and oversight of any CDBG-MIT funds to be allocated under all programs and projects as outlined in the Action Plan, et. al.

**II. GENERAL INFORMATION**

The subaward from the VIHFA to the Subrecipient, which is described below, is for the purpose of carrying out a portion of a Federal award described in section I of this agreement. This agreement must be updated to reflect any changes to the federal award and the following award information:

General Information:

Name of Grantee:	The Virgin Islands Housing Finance Authority
Name of Awarding Official:	Eugene Jones, Jr.
Title:	Executive Director
Address:	3202 Demarara Plaza Suite 200
City, State, ZIP:	St. Thomas, VI 00802
Email Address:	ejones@vihfa.gov
Phone Number:	340-777-4432
Grantee Unique Identifier:	CJGNN7KKH58
Name of Subrecipient:	VI Aqua Farm, LLC
Name of Subrecipient Primary Contact:	Mr. Duane Sydney
Title:	Member
Address:	7-1 VI Corp Lands, Estate Jealousy
City, State, ZIP:	Frederiksted, St. Croix, 00840
Email Address:	viaquafarm@gmail.com
Phone Number:	(470) 312-8916
Subrecipient Unique Identifier	

Federal Award Identification Number (FAIN):	B-1-DP-78-0002
Catalog of Federal Domestic Assistance (CFDA) Number and Award:	14.228 Community Development Block Grants/ State’s Program
Federal Award Date:	September 10, 2019
Grant Number:	MIT-656-SmBusMit-LMI
Federal Award Project Description	<b>Economic Resilience and Revitalization</b> Small Business Mitigation Program
Subaward Period of Performance as defined in Section VI of this agreement:	April 1, 2025- November 28, 2025
Amount of CDBG-MIT Funds Committed to the Subrecipient by the Grantee	One Hundred Ninety-Two Thousand \$192,000.00
Amount of Federal Funds Obligated by this Agreement:	\$192,000.00
Total Amount of Federal Funds Obligated to the Subrecipient Agreement is not to exceed:	\$192,000.00

**III. TERMS AND CONDITIONS**

**A. Exhibits**

The following attachments are incorporated into this Subrecipient Agreement (SRA) by reference and are hereby made part of this agreement.

- Exhibit A Scope of Work
- Exhibit B Key Activities, Timelines, and Performance Goals
- Exhibit C HUD Rider
- Exhibit D Contractor Performance
- Exhibit E Non-Conflict of Interest Certification
- Exhibit F Monthly Status Report

**IV. STATEMENT OF WORK**

**Scope of Services**

The subrecipient shall provide the services set forth below and in accordance with the budget established. Subrecipient shall also complete and submit the performance report(s) substantially in the form attached hereto as **Exhibit A (“Scope of Work”)**.

**Subrecipient Management Responsibilities**

The Subrecipient shall submit to VIHFA the required project application forms provided by VIHFA. The project application will be evaluated for program eligibility requirements and available budget allocations. Upon receiving project approval, the Subrecipient can begin project development.

All services included in **Exhibit A** (“Scope of Work”), shall be performed in accordance with the VIHFA guidelines, HUD guidelines and regulations, and other applicable state and federal laws and regulations.

The Subrecipient shall prepare and submit to VIHFA all required project documentation such as procurement documentation, construction drawings and specifications, construction permits and endorsements, cost estimates, property acquisitions, implementation plans, etc. in accordance with **Exhibit A** (“Scope of Work”). VIHFA reserves the authority and discretion to review and require revisions before approving the use of funds for projects.

### **Eligible Use of Funds**

As a condition of receiving CDBG-MIT funds, the Subrecipient shall provide program management for all services under the Housing, Infrastructure to include Non-Federal Match, Economic Revitalization, and Public Service Public Facilities Program as stated in the action plan which includes performing all the work described in this section. The Subrecipient shall complete the activities in a manner satisfactory to the VIHFA and consistent with the terms of conditions of this agreement and applicable Federal statutes and regulations.

### **Prohibition on Disbursement of Funds Prior to Favorable Environmental Review**

The Subrecipient must comply with the limitations in 24 CFR 58.22 for environmental review. The subrecipient cannot enter contracts or perform work until a favorable environmental review has been completed and the Authority to Use Grant Funds (AUGF) is received. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity. Project funds will not be dispersed until an AUGF is received and/or the project is exempt.

### **Prohibited Activities**

The Subrecipient may only carry out the activities described in this agreement. The Subrecipient is prohibited from charging to the CDBG-MIT grant the costs of CDBG-MIT ineligible activities, including those described at 24 CFR 570.207.

### **A. General Administration of CDBG-MIT Funds**

All costs are determined to be Activity Delivery Costs (ADCs). ADCs are those allowable costs incurred for implementing and carrying out eligible CDBG-MIT activities. All ADCs are allocable to a CDBG-MIT activity, including direct and indirect costs integral to the delivery of the final CDBG-DR assisted activity.

### **B. Pre-Award Costs**

Pre award costs applicable to Subrecipients are strictly prohibited.

### **C. National Objectives**

All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG program’s National Objectives.

Grantee and the Subrecipient certify that all activities carried out under this agreement shall meet the following national objective(s) and satisfy the following criteria:

All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG program’s National Objectives, benefiting Low-Moderate Income Individuals to include the following sub-categories:

Low-Moderate Housing (LMH); Limited Clientele (LMC); Low-Moderate Job Creation and Retention (LMJ); and Low-Moderate Area (LMA). 50% of the funds must be used on LMI.

Both Parties certifies that all activities carried out under this agreement shall meet the following national objective(s) and satisfy the following criteria: **Activities Benefiting Low/Moderate Income Persons.**

#### **D. Level of Accomplishments- Performance Goals and Timelines**

The Subrecipient shall complete the activities required under this agreement in **Exhibit A** (“Scope of Work”) in accordance with the following timeframes and performance goals set forth in **Exhibit B** (“Key Activities, Timelines, and Performance Goals”) of this agreement, herein attached and made an integral part of this agreement.

#### **E. Staffing**

The Subrecipient shall supervise and direct the completion of all activities under this agreement. The Subrecipient shall identify the key personnel working on their project(s). VIHFA has identified Key Personnel as:

- Mr. Duane Sydney
- Mrs. Kalayar Sydney

The Subrecipient shall notify the VIHFA of any changes in the Key Personnel assigned or their responsibilities under these activities. All notifications shall be submitted to the grantee in writing within 30 days of change in key personnel.

Within sixty (60) days of this executed agreement, the Subrecipient must provide the VIHFA with a list of all key personnel working on CDBG-MIT funded projects.

The Subrecipient is required to inform the VIHFA about any professional services procured. This involves providing the VIHFA with copies of the contracts, ensuring these contracts are focused on deliverables. The subrecipient must also supply a list of experts involved in each contract who will work on the CDBG-MIT projects. Additionally, the contracts should clearly outline the payment structure for the professional services staff and include clauses that specify a maximum limit on the amount that can be billed ("not to exceed") clauses.

### **V. PERFORMANCE MONITORING & REPORTING**

#### **Monitoring**

The VIHFA shall monitor the performance of the Subrecipient as required and in accordance with regulations on Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure compliance with all the requirements of this agreement, including the timeframes and performance goals associated with the activities. Substandard performance as determined by the VIHFA will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within 10 days after being notified by the VIHFA, the Grantee may impose additional conditions on the Subrecipient and its use of CDBG-MIT funds consistent with 2 CFR 200.207, suspend or terminate this agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR200.338.

**Reporting**

The Subrecipient shall submit regular monthly and quarterly progress and financial reports to the Grantee detailing the status of deliverables with a breakdown on project progress and meeting performance goals and timelines on the reporting template. The Subrecipient shall meet the following benchmarks and report as indicated:

- i. 1st Reporting Month (May 2025): Subrecipient must have submitted a drawdown request totaling 25% of CDBG-MIT Funds (project costs).
- ii. 2nd Reporting Month (July 2025): Subrecipient must have submitted a drawdown request totaling 50% of CDBG-MIT Funds (project costs).
- iii. 3rd Reporting Month (September 2025): Subrecipient must have submitted a drawdown request totaling 75% of CDBG-MIT Funds (project costs).
- iv. 4th Reporting Month (November 2025): Subrecipient must have submitted a drawdown request totaling 100% of CDBG-MIT Funds (project costs).

**Non-Performance**

If at the end of **six (6)** months from the Effective Date, as defined in Section VI of this Agreement, Period of Performance, the Program/project activity for 50% of the projects has not begun or any time during the term the Program activity has not accomplished the performance goals set forth by **Exhibit B** (“Key Activities, Timelines, and Performance Goals”) or have missed two performance benchmarks as outlined in Section B: Reporting of this section within two reporting quarters, the Grantee may, at its sole discretion, terminate this Agreement, de-obligate funds made available under this agreement and/or recapture funds previously expended by the Subrecipient under this agreement from non-federal funds. No contract extensions shall be granted unless the Subrecipient can document circumstances beyond its control that prevented the start of the activity.

**VI. BUDGET**

The Subrecipient shall complete all activities in this agreement in accordance with the appropriate project budget. Each project must receive a preliminary review and approval from VIHFA prior to moving to an environmental review. The Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget(s) must be approved in writing by both the Grantee and the Subrecipient. However, in no case shall any such amendments, revisions or reallocations exceed the total allocation of CDBG-MIT Funds without prior written consent of the Grantee. All budget costs must be reasonable, eligible, and allowable.

**A. Budget Table**

Budget Category	Project Type	Cost (Direct)
Small Business Mitigation	Installation of secure fencing	\$192,000.00
	<b>Total</b>	<b>\$192,000.00</b>

**B. Detailed Budget Table**

**Detailed Budget Information (Enter Detail Budget Information below)**

	CDBG-MIT BUDGET	OTHER SOURCES OF FUNDS (PT 1)	OTHER SOURCES OF FUNDS (PT 2)	OTHER SOURCES OF FUNDS (PT 3)	TOTAL COST
<b>Project Cost Direct</b>					0
-	\$78,022.52				78022.52
-	\$12,000				12000
-	\$101,977.48				101977.48
-					0
-					0
<b>Subtotal Project Cost (Direct)</b>					0
-					0
-					0
-					0
<b>Total Project Cost</b>					0
-					0
-					0
-					0
-					0
-					0
<b>TOTAL</b>	192000	0	0	0	192000

**C. Program Income**

Subrecipient shall report to Grantee all Program income, as defined in 24 CFR 570.500(a), generated by Program activities carried out with CDBG-MIT funds. Subrecipient and Grantee must follow program income guidelines in accordance with 24 CFR 570.504. Subrecipient shall return to the Grantee any program income received monthly and must alert the Grantee within 30 days if program income was generated. All the provisions of this Agreement shall apply to activities for which Subrecipient uses Program income.

**D. Indirect Costs**

All work performed will be activity delivery costs. Indirect costs may **not** be charged to this subaward.

**VII. PERIOD OF PERFORMANCE AND TERM**

The period of performance for the Subrecipient, meaning the time during which the Subrecipient may incur new obligations to carry out activities under this agreement, starts on the 1<sup>st</sup> day of April, 2025 and ends on the 28<sup>th</sup> day of November 2025.

*Extensions*

VIHFA may extend this agreement’s terms, and an extended period of performance may be granted once Subrecipient has notified Grantee of a request to extend performance and reasoning as to why the extension is needed. The term of this agreement shall not exceed the lifetime of the Initial Grant Agreements between VIHFA and HUD, unless the term of the Initial Grant Agreement is extended by HUD, in which case the term of this SRA cannot exceed the extension.

#### E. Implementation of Agreement and Assurances

1. The Subrecipient is responsible for complying with said CDBG-MIT and federal regulations and for implementing the Project in a manner satisfactory to the VIHFA and HUD and consistent with any applicable guidelines and standards that may be required as a condition of the VIHFA's providing the Grant Funds, including but not limited to all applicable CDBG-MIT Project Administration and Compliance requirements set forth by this Agreement. The Grantee's providing of CDBG- DR Grant Funds under this Agreement is specifically conditioned on the Subrecipient's compliance with this provision and all applicable CDBG-MIT regulations, guidelines, and standards, including compliance with 24 CFR 570.900 et seq., governing performance reviews and remedial action.
2. The Subrecipient shall be responsible for requiring its contractors/vendors (and all subcontractor tiers) to adhere to all applicable Territory and Federal laws and regulations, and to conduct all necessary monitoring for such compliance. As to laws and regulations applicable to the use of CDBG- DR funds and to any other laws and regulations that may apply to construction projects, the Subrecipient is responsible for determining the applicable laws and regulations and ensuring compliance therewith.
3. Notwithstanding the foregoing, the Subrecipient is responsible for coordination of the environmental review, decision-making, and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law. the Subrecipient agrees, however, that it will not commit any Grant Funds to a project or start any work associated with a project until it has approval from the Grantee's CDBG-MIT Environmental Department, which is charged by HUD with evaluating all CDBG-MIT funded projects, and until such time in which HUD approves a certification of compliance with environmental laws and request for release of funds.
4. The Subrecipient agrees to comply with all applicable Federal CDBG-MIT, and cross-cutting statutes and regulations subject to waivers cited in the applicable Federal Register notices, Department of Housing and Urban Development, Allocations, Common Application, Waivers, and Alternative Requirements for the Grantee receiving CDBG-MIT Funds in Response to the 2017 storms.

#### F. Performance and Timeline Requirements

The Subrecipient shall complete the required activities under **Exhibit A** and in **Exhibit B**, including 100% expenditure of allocated funds, within the timeframes outlined in **Exhibit B**.

The Subrecipient agrees to comply with the projects' draw-down request terms and agrees to use best efforts to comply with benchmarks as outlined in the Reporting section of this agreement. Grant Funds not anticipated to be expended by the outlined deadline, or extended, are subject to recapture and reallocation to other eligible CDBG-MIT Projects areas and/or Territorial agencies.

This agreement and its terms and conditions shall remain in effect during any period that the Subrecipient has control over CDBG-MIT funds provided through this agreement, including program income as defined in 24 CFR 570.489(e), 83 FR 5844, and 83 FR 40314.

## VIII. PAYMENT

Subrecipient shall only seek a total payment amount **not to exceed \$192,000.00** from The Virgin Islands Housing Finance Authority Community Development Block Grant-Mitigation Fund for Program services provided under this Agreement and for reimbursement of costs and expenses that Subrecipient necessarily incurs for the Program and that are eligible for reimbursement under applicable regulations.

The Subrecipient shall submit to the Grantee requests for payments of activities under this agreement and consistent with the approved budget (the "Request for Payment") within ten (10) days from the last date of each month of the agreement and as needed. Each Request for Payment shall be broken into requested draws against the budget line items specified in Section VI.

Payment will be made upon submission by the Subrecipient of a properly executed Request for Payment Package, together with deliverables necessary to justify payment. The Request for Payment form must also be accompanied by documentation from the Subrecipient demonstrating that all activities for which payment is requested have been made in accordance with this agreement.

The Grantee will review the Request for Payment and any associated documentation and allocate/transfer funds within 30 days of approval of the invoice. The VIHFA may request additional information or invoice details from the Subrecipient at its discretion.

The VIHFA shall authorize the Subrecipient the payment through allocation of CDBG-MIT funds available under this agreement based upon information submitted by the Subrecipient for allowable costs permitted under this agreement and consistent with the approved budget. Except for advances, payments/allocations will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments/Allocations will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. The Grantee shall not pay any advance or reimburse any costs not consistent with this agreement or costs not consistent with federal statutes, regulations (including Cost Principles in 2 CFR Part 200, subpart E), the terms and conditions of the CDBG-MIT award, or any costs that would otherwise result in the Grantee charging improper, unauthorized, or otherwise unallowable costs to the award. Additional services beyond this agreement but determined to be necessary to execute CDBG- DR objectives (as determined by reviewing the VIHFA's Action Plan and reviewing the project scope, intended outcomes, and impact to the LMI national objective), must be presented a minimum of 30 days in advance of execution and may necessitate an amendment to the Agreement.

Additionally, for the Subrecipient to receive payment for any work performed hereunder, the following certification must be included in each Request for Reimbursement submitted to the VIHFA:

*" Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract, which is the basis of this invoice, and should they be a party to, or have an interest in, the profits or benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefore."*

## **IX. AMENDMENTS**

This Agreement may only be amended in writing and executed by duly authorized representatives of both Parties. Amendments shall not invalidate this Agreement, nor relieve or release either Party except as may otherwise be provided.

The Grantee may, in its discretion, require that this Agreement be amended to conform to federal, or Territorial governmental laws, regulations, guidelines, policies and available funding amounts. If any such amendment would result in a change in the funding, the activities, or schedule of the activities to be performed under this Agreement or the Grant Funding Sub-Agreement, such changes shall be incorporated by written amendment signed by the Grantee and the Subrecipient Department.

## **X. SUSPENSION or TERMINATION**

### **A. Suspension or Termination for Cause**

The VIHFA may terminate this Agreement, in whole or in part, if the Subrecipient materially fails to comply with any term of this Agreement, which shall include, but not be limited, to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may be applicable at any time;
2. Failure, for any reason, of the Subrecipient fulfill in a timely and proper manner the material obligations under this Agreement;
3. Submission of incorrect or incomplete reports to the VIHFA in any material respect as determined by VIHFA, HUD or their auditors;
4. Ineffective or improper use of CDBG-MIT Funds as provided for under this Agreement.
5. Failure of the SUBRECIPIENT to approve and provide an approved budget to the VIHFA for fulfillment of this Agreement.

The Grantee shall promptly notify the VIHFA, in writing, of its determination and the reasons for the suspension or termination together with the date on which the suspension or termination shall take effect and any other notifications required under 2 CFR part 200, subpart D. The VIHFA agrees that it shall not exercise its right to suspend or terminate this Agreement until it has given written notice to the Subrecipient of the alleged non-compliance and has given the Subrecipient thirty (30) days after the VIHFA's receipt of such notice, to correct and/or cure, the alleged non-compliance. The Subrecipient may request additional time in writing to correct the alleged non-compliance which may or may not be granted by the VIHFA. If the non-compliance cannot be corrected and/or cured, the Subrecipient shall, unless the termination or suspension notice directs otherwise, immediately discontinue all activities relating to this Agreement, except as may otherwise be legally required pursuant to a binding commitment to perform.

Upon termination, the VIHFA retains the right to recover any improper expenditure from the Subrecipient and the Subrecipient must return to the VIHFA any improper expenditures no later than thirty (30) business days after the date of termination. The VIHFA may, at its sole discretion, allow the Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this Agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations, or requirements.

## **B. Suspension or Termination for Convenience**

This Agreement may also be terminated in whole or in part by either the Grantee or based upon agreement by both the Grantee and the Subrecipient and in accordance with the requirements in 2 CFR part 200, subpart D. The Grantee may at any time give written notice to the Subrecipient terminating this Agreement within thirty (30) business days or suspending the Agreement, in whole or in part, for the Grantee Department's convenience and without cause. If the Grantee terminates this Agreement or suspends the Project, the Subrecipient shall promptly reduce staff, services and/or outstanding commitments to minimize the cost of termination or suspension. In case of termination for the Grantee Department's convenience, the Subrecipient shall be entitled to receive payment for Services executed prior to termination, together with reimbursable expenses, if applicable, then due through the date of termination and reasonable costs incurred by reason of such termination for which the Subrecipient is not otherwise compensated.

## **C. Termination Due to Unavailable Funding**

This Agreement is contingent upon the appropriation and release of CDBG-MIT funds to the VIHFA to fulfill the requirements of this Agreement. If the funds anticipated for the budget/funds in this agreement are, at any time, not forthcoming or not sufficient, either through the failure of the Federal government to provide funds or the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to VIHFA, the VIHFA has the right upon ten (10) business days written notice to the Subrecipient, to terminate this agreement without damage, penalty, cost or expenses to VIHFA of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## **D. Obligations Governing Use of CDBG-MIT Funds Survive Termination**

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish the SUBRECIPIENT 's obligations governing the use of CDBG-MIT funds under applicable statutes, federal notices, and regulations or under this Agreement and/or shall not terminate any of the SUBRECIPIENT 's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following:

- (1) the duty to maintain and provide access to records;
- (2) the duty to monitor and report on the use of any CDBG-MIT funds expended or awarded in compliance with all terms, conditions, and regulations herein;
- (3) duty to enforce compliance with the terms of CDBG- DR grants; and
- (4) duty to monitor, collect and manage Program Income, if applicable.

## **E. Payment upon Suspension or Termination**

1. *Payment upon Suspension or Termination for Cause:* Upon termination, the Grantee retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient must return to the Grantee any improper expenditures no later than thirty (30) business days after the date of termination. The Grantee may, at its sole discretion, allow the Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this Agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations, or requirements.

2. *Payment upon Suspension or Termination For Convenience:* In the matter of suspension or termination for convenience, the Subrecipient shall be entitled to payment/allocations on approved invoices submitted to the VIHFA CDBG-MIT Finance Department no later than thirty (30) days from the date of termination contained within the notice, to the extent payment requests represent Eligible Activities satisfactorily completed during the term of this Agreement and otherwise reimbursable under the terms of this Agreement.

#### **F. Period of Transition**

Upon termination of this agreement, and for sixty (60) consecutive days thereafter (the “Transition Period”), Subrecipient agrees to be available to assist VIHFA with the transition of services assigned to the Subrecipient by VIHFA. The Subrecipient shall provide VIHFA with assistance as requested to facilitate the transfer of responsibility for the performance of the Services to VIHFA or a third party designated by the VIHFA. VIHFA reserves the right to provide for the execution of a Transition Services Agreements for the Transition Period. In such instance, the Subrecipient will be paid at a reasonable, agreed upon, rate for any work performed for VIHFA during the Transition Period. During this period, all records, files, documentation, etc. will be turned over to VIHFA. VIHFA reserves the right to request any additional documentation pertaining to this matter at least four years after termination.

### **XI. OTHER REQUIREMENTS TO COMPLY WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD**

The CDBG-MIT funds available to the Subrecipient through this agreement constitute a subaward of the Grantee’s Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This agreement includes the terms and conditions of the Grantee’s award that are imposed on the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this agreement.

#### **G. General Compliance**

The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-MIT funds available under this Agreement. These Federal Register notices include, but are not limited to, 83 FR 5844 (February 9, 2018), 83 FR 40314 (August 14, 2018), FR-6109-N-03 (September 4, 2019) and FR-6109-N-02 (August 30, 2019). Notwithstanding the foregoing, (1) the Subrecipient does not assume any of VIHFA’s CDBG-MIT Environmental Department’s responsibilities for environmental review, decision-making, and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the Grantee Department’s responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, State, and local laws, regulations, and policies that govern the use of the CDBG-MIT funds regardless of whether CDBG-MIT funds are made available to the Subrecipient on an advance or reimbursement basis.

#### **H. Section 312 of the Stafford Act-Duplication of Benefits**

The Subrecipient must not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and the Emergency Assistance Act (42 USC 5155) and as described in the Appropriations Act. Funds will be allocated back to the Grantee if the Subrecipient has received other disaster assistance funding for the same purposes as under this Agreement.

The Subrecipient agrees to reimburse/reallocate the funding it receives pursuant to this Agreement back to the Grantee if the Subrecipient later receives other disaster assistance funding for the same purposes as under this Agreement. Additionally, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-MIT activity, if there is no duplication of benefits of federal funds. This includes programs or activities administered by, but not limited to, FEMA, the United States Environmental Protection Agency ("EPA"), the United States Department of Transportation ("DOT"), or the U.S. Army Corps of Engineers ("USACE").

#### **I. Drug-Free Workplace**

The Subrecipient hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR 21. Further, the Subrecipient will endeavor to ensure that Contractors/Subcontractors and any third parties providing Project services are in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR Part 21.

#### **J. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

The Subrecipient must comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. These provisions include:

##### **1. Financial & Program Management**

The Subrecipient shall expend and account for all CDBG-MIT funds received under this agreement in accordance with 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management.

##### **2. Cost Principles**

Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 CFR part 200, subpart E. All costs listed in 2CFR part 200, subpart E, that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this agreement, except for the following:

- i. Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.
- ii. Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program.
- iii. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445);
- iv. Organization costs (2 CFR 200.455); and
- v. Pre-Award Costs, as limited by this agreement.

## **K. Financial Management System**

1. The Grantee may review the adequacy of the financial management system of the Subrecipient under this Agreement at any time subsequent to the signing of the Agreement. If Grantee determines that the Subrecipient's accounting system does not meet the standards described in this section, additional information to monitor the Agreement may be required by the Grantee upon written notice to the Subrecipient, until such time as the system meets with the Grantee's approval. The Subrecipient will notify Grantee as soon as practicable if the Subrecipient cannot comply with the requirements established in this section of the Agreement.
2. The Subrecipient's financial management system shall be consistent with the standards set forth 24 CFR 85.1 et seq. and 24 CFR 85.20 et seq., and 2 CFR Part 200, Subpart D, Post Federal Award Requirements and Standards for Financial and Program Management, and the requirements for Payment Request in Appendix E, and the requirements for Records and Records Retention in Section XI (F- Documentation and Recordkeeping).
3. The Subrecipient shall maintain accurate, current, and complete reports for disclosure of financial results in a format which conforms with generally accepted principles of accounting and reporting:
  - i. Accounting Records: Maintain records that adequately identify the source and application of the CDBG-MIT Funds.
  - ii. Internal Control: Maintain effective internal and accounting controls over CDBG- DR Funds provided to the Subrecipient under this Agreement. The Subrecipient shall adequately safeguard all such funds and assure that they are used solely for authorized purposes. The Subrecipient Department's records shall distinguish Grant Funds for its Activities from those to be reimbursed to any Subrecipient.
  - iii. Budget Control: Provide for the comparison of the actual expenditure or outlays with budgeted amounts.
  - iv. Allowable Costs: Implement procedures to determine the reasonableness and acceptability of costs consistent with this Agreement.
  - v. Source Documentation: Maintain accounting records that are supported by source documentation (such as purchase orders, invoices, timesheets, and canceled checks).
  - vi. Disbursement Management: Establish procedures to minimize the time elapsed between the receipt of funds from the Grantee and disbursement by the Subrecipient Department.
4. Reversion of Assets: The use and disposition of immovable property, equipment and remaining CDBG-MIT Funds under this Agreement shall be in compliance with all CDBG-MIT regulations, which include but are not limited to the following:
  - a. The Subrecipient shall return to the Grantee any Grant Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination of this Agreement.

- b. In all cases in which equipment acquired, in whole or in part, with CDBG- DR Funds is sold, the proceeds shall be reviewed to determine if they are Program Income, as defined in 2 CFR Part 200.80, and prorated to reflect the extent to which CDBG-MIT Funds received under this Agreement were used to acquire the equipment. Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred back to the Grantee for the CDBG-MIT program or (b) retained by the Subrecipient after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of any non-CDBG-MIT funds used to acquire the equipment.
- c. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG-MIT National Objectives pursuant to 24 CFR 570.208. Under §570.503(b)(7), property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 that is within the subrecipient's control, the property must either:
  1. Be used by the subrecipient to continue to meet one of the program's national objectives for at least 5 years after the expiration of the subrecipient agreement; or,
  2. If a national objective is not met during this time period, the Grantee must be reimbursed for the current fair market value, less any portion of the value attributable to non-CDBG funds. This payment is considered program income to the Grantee. No payment is required after the period specified in paragraph 1. above.

The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

- d. Change of Use of Real Property- Subrecipient may not change the use or planned use of any real property acquired or improved with CDBG funds in excess of the threshold for small purchase procurement (2 CFR 200.88) without first providing affected citizens with notice of, and opportunity to comment on, any proposed change, and determining either:
  1. The new use meets one of the national objectives and is not a building for the general conduct of government; or
  2. The new use is deemed appropriate (after consultation with affected citizens) but will not meet a national objective.

If it is determined the new use falls under 2., the Subrecipient must reimburse the Grantee's CDBG-MIT program, at the discretion of the Grantee, in the amount of the current fair market value of the property, less the value attributable to the non-CDBG portion for the acquisition and improvements to the property. The requirements at §570.489(j) assume the property met a national objective before any change in its use. If the CDBG-assisted property never met a national objective, the Subrecipient must reimburse Grantee from non-federal funds. The reimbursed amount is treated as program income and must be spent in accordance with CDBG program income requirements.

These requirements apply from the date CDBG-MIT funds are first expended for the property until five years after close-out of the Subrecipient's agreement. If the change in use occurs after grant closeout but within 5 years of such closeout, the Subrecipient must reimburse the Grantee.

## **L. Documentation and Record Keeping**

### **1. Records to be Maintained**

The Subrecipient shall establish and maintain sufficient records to enable the Grantee to (1) determine whether the Subrecipient has complied with this Agreement, applicable Federal statutes and regulations, and the terms and conditions of the Grantee Department's Federal award and (2) satisfy recordkeeping requirements applicable to the Grantee. These records include the records described in Section III. of this agreement, Scope of Service.

The Subrecipient shall maintain records required by 24 CFR 570.506, which includes: Records providing a full description of each activity undertaken; Records required to determine the eligibility of activities; Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-MIT assistance; Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations; Financial records as required by 24 CFR 570.502, and 2 CFR part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and other records necessary to document compliance with this Agreement, any other applicable Federal statutes and regulations, and the terms and conditions of Grantee Department's award.

### **2. Access to Records**

As required by 2 CFR 200.331(a)(5), the Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient Department's records and financial statements as necessary for VIHFA to meet its audit requirements under the Federal award.

The Subrecipient shall comply with the retention and access requirements set forth in 24 CFR 570.506. The VIHFA, HUD, the Comptroller General of the United States, and any of their duly authorized representatives or agents, shall have access to, and the right to examine, all records, books, documents, and papers of the VIHFA created under this Agreement for the purpose of audits, examinations, and making excerpts and transcriptions.

The VIHFA shall provide reasonable access to records regarding the past use of CDBG funds in compliance with applicable Territorial and Federal laws and regulations regarding privacy and obligations of confidentiality.

All records, reports, documents, or other material or data, including electronic data, related to this Agreement and/or obtained or prepared by the Subrecipient 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 is the property of VIHFA.

### **3. Record Retention and Transmission of Records to the Grantee**

Prior to close out of this Agreement, the Subrecipient must transmit to the Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the Federal award. The Subrecipient shall maintain, and require all sub-Subrecipients, borrowers, contractors, and all tiers of subcontractors to maintain:

- A. All Program records required by 24 CFR 570.506 for five (5) years following close-out of the Agreement or the Grant Fund Agreement, as applicable. These records shall include the following as applicable:
- a. The executed Agreement;
  - b. Description, geographic location, and budget of each funded Activity;
  - c. Eligibility and national objective determinations for each Activity;
  - d. Personnel files;
  - e. Property management files;
  - f. HUD monitoring correspondence;
  - g. Citizen participation compliance documentation;
  - h. Fair Housing and Equal Opportunity records;
  - i. Environmental review and regulatory compliance documents;
  - j. Documentation of compliance with other federal requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint, etc.); and
- B. All Financial records to include:
- a. Chart of accounts;
  - b. Manual on accounting procedures;
  - c. Accounting journals and ledgers;
  - d. Source documentation (such as purchase orders, invoices, canceled checks);
  - e. Procurement files (from solicitation to contract);
  - f. Status of reimbursements;
  - g. Real property inventory, if applicable;
  - h. Bank account records (including revolving loan fund records, if applicable);
  - i. Draw down requests;
  - j. Payroll records and reports including timesheets or timecards as applicable;
  - k. Financial reports;
  - l. Audit files; and
  - m. Relevant financial correspondence.

C. Project/Activity records to include the following documentation:

- a. Eligibility of the Activity for Grant Funding;
- b. Evidence of having met a national objective (See 24 CFR 570.482);
- c. All State and Federal environmental regulatory review(s) and approval(s)
- d. Procurement policy
- e. Any cost analysis, RFP(s), evaluation criteria, evaluations, award letters, notification letters, bids, or contracts;
- f. Characteristics and locations of the Programs and each Program Activity;
- g. Compliance with special program requirements, such as coordination and cooperation with any other departments;
- h. Budget and expenditure information (including draw requests); and
- i. The status of the Program and each Activity / monthly progress reports

D. Client Data and Other Sensitive Information

The Subrecipient shall maintain data demonstrating client eligibility for activities provided under this agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided. The Subrecipient must comply with 2 CFR §200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information HUD or the Grantee designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

**M. Closeout**

The Subrecipient shall closeout its use of the CDBG-MIT funds and its obligations under this Agreement by complying with the closeout procedures in 2 CFR § 200.344. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this Agreement, the Subrecipient shall transfer any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds, further, any real property under the Subrecipient Department's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the Subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

**N. Nondiscrimination**

The Subrecipient will comply with the following mandatory provisions and will include these provisions where applicable in every contract, specifically or by reference, so that such provisions will be binding upon each of its contractors/vendors and ensure its inclusion in all subcontracts.

1. 24 CFR Part 6

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, 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 Federal financial assistance.

The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded as a whole or in part with CDBG DR funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs.

2. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq.

The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term "building" does not include privately owned residential structures not leased by the government for subsidized housing programs.

3. Title 9 of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any federally funded education program or activity.

4. Title 11 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies, or other instrumentalities.

5. Housing for Older Persons Act of 1995 ("110PA") (see 42 U.S.C. 3607), which governs housing developments that qualify as housing for persons aged 55 or older.

6. Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12181 et sec.) require that every newly constructed or altered building or facility (other than a privately-owned residential structure, and certain other limited exceptions) complies with any accessibility requirements required by Title III of the Americans with Disabilities Act. The subrecipient shall be responsible for conducting inspections to ensure compliance with these specifications by any contractor or subcontractor.

7. Other statutory requirements as outlined in the HUD Rider, attached hereto as Appendix B will be required to attach all contracts executed pursuant to this Agreement.

8. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with 2 CFR Part 200, subpart F.

9. Title VI of the Civil Rights Act of 1964 (24 CFR part 1)

(ii) General Compliance:

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended [if the Grantee is subject to 24 CFR part 570, subpart K, insert: “and 24 CFR 570.601 and 570.602”. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(ii) Assurances and Real Property Covenants:

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1. If the Federal financial assistance under this agreement is to provide or is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient’s assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application.

This assurance gives the Grantee and the United States a right to seek judicial enforcement of the assurance and the requirements on real property. In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-MIT funds and provided to the Subrecipient Under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If the Subrecipient receives real property interests or funds or for the acquisition of real property interests under this Agreement, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

10. Affirmative Action

(i) Approved Plan the Subrecipient agrees that it shall carry out pursuant to the Grantee’s specifications an Affirmative Action Program in compliance with the President’s Executive Order 11246 of September 24, 1966, as amended, and implement regulations at 42 CFR chapter 60. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program.

The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the release of funds under this agreement.

(ii) Women- and Minority-Owned Businesses (W/MBE) [If the Grantee is subject to 2 CFR part 200, subpart D, and more specifically 2 CFR 200.321, insert: “ The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement.

(iii) Notifications The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the Subrecipient’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv) Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement the Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

## **O. Insurance & Bonding**

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR §200.326 and §200.310. The Subrecipient (non-Federal entity) must, at a minimum, provide equivalent insurance coverage for real property and equipment acquired or improved with CDBG-MIT funds as provided to property owned by the Subrecipient (non-Federal entity) from loss due to theft, fraud and/or undue physical damage, and acquire a blanket 11 of 24 fidelity bond covering all employees in an amount equal to CDBG-MIT funds provided by the Grantee.

## **P. Audits, Inspections, and Monitoring**

### **A. Single Audit**

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements, currently set at \$750,000. Annually, the Subrecipient must provide the Grantee with its Single Audit for the fiscal year.

### **B. Inspections and Monitoring**

The Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR part200. The Subrecipient must submit to monitoring of its activities by the Grantee as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this agreement. This review must include: (1) reviewing financial and performance reports required by the Grantee; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a 14 of 24 management decision for audit findings pertaining to this Federal award provided to the Subrecipient from the Grantee as required by 2 CFR§200.521.

### **C. Corrective Actions**

The Grantee may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. The Grantee may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, Grantee may impose additional conditions on the use of the CDBG-MIT funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

The Subrecipient shall be subject to reviews and audits by the Grantee, including onsite reviews of the Subrecipient as may be necessary or appropriate to meet the requirements of 4 CFR 570.910.

#### **Q. Property Standards**

Real property acquired by the Subrecipient under this agreement shall comply with the Property Standards in 2 CFR 200.310 through 2 CFR 200.316, except to the extent they are inconsistent with 24 CFR 570.200(j) and 24 CFR 570.489(j), in which case Subrecipient shall comply with 24 CFR 570.200(j) and 24 CFR 570.489(j), and except to the extent that proceeds from the sale of equipment are program income and subject to the program income requirements under this agreement, pursuant to 24 CFR 570.489(e)(1)(ii).

#### **R. Federal Funding Accountability and Transparency Act (FFATA)**

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The grantee must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Unique Entity Identifier (UEI). Both parties must also comply with the provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

#### **S. Relocation, Real Property Acquisition, and One-for-one Housing Replacement**

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606. In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

#### **T. Procurement Standards**

- A.** The Subrecipient must have and use documented procurement procedures, consistent with VI laws and other regulations for the acquisition of property or services required under a Federal award or subaward. The Subrecipient's documented procurement procedures must conform to the procurement standards identified in VIHFA's Procurement Policies and Procedures or utilize their own policy and adopt 2 CFR 200.318 through 2 CFR 200.327 requirements.
- B.** The Subrecipient shall conduct all procurement transactions in a manner providing for full and open competition and comply with its procurement regulations as certified compliant by VIHFA's procurement department, including the need for cost analysis in advance of procurements and documentation of free and open competition. Additionally, the Subrecipient is required to comply with all applicable Territory laws that may apply to its procurement transactions.
- C.** Upon request, the Subrecipient shall provide the Grantee with copies of its documentation concerning the selection process for contractors/sub-Subrecipient s, contracts, subcontracts, and job descriptions, prior to selection and/or execution.
- D.** Utilization of Small, Minority and Women's Owned Enterprises.

The Subrecipient and its contractors must use their best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632) and "minority and women's business enterprise" means a business at least fifty- one (51) percent owned and controlled by minority group members or women. The Subrecipient shall also ensure similar requirements is provided in its contracts utilizing CDBG-MIT Funds, etc.

**E. Sole Source Procurement.**

The Subrecipient shall make all reasonable efforts to avoid sole source contracts but when no reasonable, feasible, or cost-effective alternative exists, the Subrecipient shall specifically identify all awards of sole source contracts and the rationale or justification for making the award on a sole source basis in reports to the Grantee Department.

**F.** The Subrecipient is prohibited from entering cost-plus a percentage of cost and percentage of construction costs contracts.

**G. Procurement and Contractor Oversight**

The Subrecipient shall impose the Subrecipient Department's obligations under this Agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors. The Subrecipient must comply with CDBG regulations regarding debarred or suspended entities at 24 CFR 570.489(l). CDBG funds may not be provided to excluded or disqualified persons. The Subrecipient shall maintain oversight of all activities under this Agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this Agreement.

**U. Labor and Employment**

**A. Labor Standards**

The Subrecipient shall comply with the in-labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement 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, as amended (40 U.S.C. 3141, et seq.), and 29 CFR part 1, 3, 5, 6, and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units. The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with the applicable hour and wage requirements. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient shall also comply with all labor laws (as referenced under 24 CFR 570.603) and make efforts to hire, procure, when possible, minority- or women-owned business enterprises in accordance with Section 8 of the Small Business Act, 15 U.S.C. § 637, as amended.

## **V. Section 3 of the Housing and Urban Development Act of 1968**

The Subrecipient shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and its implementing regulations at 24 CFR part 135. The Subrecipient shall include the “Section 3 clause” at 24 CFR 135.38 in every “Section 3 covered contract” (as defined in 24 CFR 135.5).

All Contracts executed pursuant to this Agreement shall be subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 as amended, 12 U.S.C., 17010. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

## **W. Conduct**

### **a. Hatch Act**

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### **b. Conflict of Interest**

The Subrecipient’s designees, agents, members, officers, employees, consultants, and other public official who exercises or who has exercised any functions or responsibilities with respect to the Program/Project during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Project, are barred from any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program/Project or in any activity, or benefit there from, which is part of this Agreement at any time during or after such person's tenure.

In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with the conflict-of-interest provisions in the Grantee’s procurement policies and procedures. In all cases not governed by the conflict-of-interest provisions in the Grantee’s procurement policies and procedures, the Subrecipient shall comply with the conflict-of-interest provisions in 24 CFR 570.489(h).

### **c Lobbying Certification**

The Subrecipient hereby certifies that:

- ii. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 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;

- iii. 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- iv. It shall require that the language of paragraph (a) through (d) 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, and
- v. 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 required by section 1352, title 31, U.S.C. 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.

## **X. Religious Activities**

Faith-based organizations are eligible for HUD funding on an equal footing with any other organization and retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. However, an organization that is awarded direct HUD funds may still engage in inherently religious activities providing they are voluntary for participants in HUD-funded activities and occur separately in time or location from the HUD funded activities. Faith-based organizations, like all organizations implementing HUD-funded programs, must serve all eligible beneficiaries without regard to religion.

Faith-based organizations, like other organizations, may receive HUD funds to acquire, construct, or rehabilitate buildings and other real property if the funds only pay the costs attributable to HUD eligible activities.

## **Y. Environmental Conditions**

### **A. Prohibition on Choice Limiting Activities Prior to Environmental Review**

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision making, and action (see 24 CFR part 58) and is not delegated the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity.

### **B. Air and Water**

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this agreement:

- Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder.

### C. Flood Disaster Protection

The Subrecipient shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, 42 USC 4012a. Additionally, the Subrecipient shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which includes a prohibition on the provision of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood purchase requirements.

#### Lead-Based Paint

The Grantee and Subrecipient shall follow the Grantee's procedures with respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title. These provisions are attached to this agreement in Appendix D.

### D. Historic Preservation

The Subrecipient shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended, codified in title 54 of the United States Code, and the procedures set forth in 36 CFR part 800 insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

## Z. **OTHER REQUIREMENTS IMPOSED BY THE VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**

### A. **Specific Conditions**

- i. Complete VIHFA Self Certification Training and comply with the provision therein.
- ii. Complete and provide single audit 15 days prior to the anniversary of this SRA.
- iii. Acceptable staffing capacity to guarantee separation of duties.

***Subrecipient is subject to additional conditions imposed by the Grantee based on deficiencies identified during capacity assessment and or monitoring events; ensuing the agreement shall be modified to reflect the additional requirements.***

**B. Professional Standards**

The Subrecipient shall ensure its Contractor/Subcontractor will complete all work in a substantial and workmanlike manner according to standards and practices in the Contractor's/Subcontractor's trade and the work shall conform to all applicable building codes or other codes and regulations which apply to the work to be performed whether or not covered by the specifications and drawings for the work, including any Contractor/Subcontractor registration requirements. Contractor/Subcontractor shall warrant that the final product of contractor's/subcontractor's work shall be fit for the purposes for which it is intended. Contractor/Subcontractor shall warrant against defects in materials and labor for a period of one (1) year from the date of completion and upon acceptance of the work by the Subrecipient Department.

**C. Defective Work**

The inspection of work shall not relieve the Contractor/Subcontractor 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 shall be rejected, notwithstanding that such work and materials have been previously overlooked by the Subrecipient and accepted or paid for. 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 therefore, the Subrecipient shall ensure that the Contractor shall forthwith make good such defect in a manner satisfactory to the Subrecipient and the Grantee Department. The Contractor/Subcontractor shall replace, at its own expense, damaged or unsuitable materials with new material of satisfactory quality.

**D. Right to Withhold**

If the Work under any Contract, funded through this Agreement, is not performed in accordance with the terms hereof, the Grantee reserves the right to withhold out of any payment due to the Contractor/Subcontractor, such amount as may be deemed ample to protect the VIHFA against loss or to assure payment of claims arising there from, and, at their option, the Subrecipient and the Grantee may apply such sum(s) in such a manner as may be deemed proper to secure their interest or to satisfy such claims. The Contractor/Subcontractor shall be immediately notified in writing in the event that the Subrecipient and the Grantee elect to exercise their right to withhold any amount due to unsatisfactory performance. No such withholding or application shall be made if and while the Contractor gives satisfactory assurance to the Parties that such claims will be paid by the Contractor's insurance carrier, if applicable, in the event that such a claim is not successful.

**E. Insurance**

As part of VIHFA, the Subrecipient carries sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage. If this was to change and/or cease, the Subrecipient at a minimum shall purchase a blanket fidelity bond, or equivalent insurance acceptable to the VIHFA.

**F. Liquidated Damages**

The Subrecipient is expected to assess Liquidated Damages against the Contractor/Subcontractor for scope of work not completed under the terms set forth in any Contract, liquidated damages shall be assessed pursuant to its procurement policies. Liquidated damages shall first be deducted from any contract monies due but not yet paid, to the extent available.

### **G. Federal Labor Standards Provision (DAVIS BACON ACT)**

All laborers and mechanics employed on the Project covered by this contract shall be paid 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**, as amended (40 U. S. 276a- 276a-5) and shall receive overtime compensation in accordance with, and subject to the provisions of the Contract Work Hours and Safety Standards Act 940 U. S. C. 327332). The Contractors and all its sub-contractors shall comply with regulations issued pursuant to the labor standards provisions.

For the duration of this Contract, the Subrecipient VI Aqua Farm, LLC shall ensure its Contractor and Subcontractors submit copies of weekly payroll forms and cancelled checks to both the Subrecipient, or a designated Labor Standards Coordinator/Compliance Specialist.

### **H. No Personal Liability of Individual Representatives**

No covenant or representation contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent, or employee of either Party in his or her individual capacity, and neither the officers of either Party nor any official executing this Agreement shall be personally liable with respect to this Agreement or be subject to any personal liability or accountability under this Agreement by reason of the execution and delivery of this Agreement. This clause does not apply to unlawful actions (i.e., fraud) outside of the scope of his/her/they employment/reasonableness.

### **I. Prohibited Activity / Fund Use**

The Subrecipient VI Aqua Farm, LLC is prohibited from using, and shall require that its Contractors and Subcontractors, if any, are prohibited from using, the CDBG-MIT Funds to be provided herein or personnel employed in the administration of the project for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. The Subrecipient will comply with the provision of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of certain employees.

The Subrecipient VI Aqua Farm, LLC must ensure that its Contractors and Subcontractors seeking reimbursement 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 or a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. The Subrecipient's Contractors and Subcontractors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

### **J. Contractors / Subcontractors/Consultants**

The Subrecipient VI Aqua Farm, LLC may enter contracts with third parties for the performance of any part of its duties and obligations in implementing the Projects described in this Agreement. In no event shall the existence of such a contract be operated to release or reduce the liability of the Subrecipient for any breach in its performance or any Contractor's/Subcontractor's duties. Additionally, all contracts that the Subrecipient enters with Contractors/Subcontractors/Consultants shall be deliverable based contracts.

#### **K. Applicability of Provisions Included/Excluded From the Agreement**

Failure to expressly reference any applicable federal or State regulation, statute, public law, Executive Order, agency directive or OMB Circular will not exempt Party from compliance with such applicable law or regulation, and all applicable provisions not included will be deemed as inserted herein.

Likewise, execution of this Agreement will not obligate either Party to comply with any regulation, statute, public law, Executive Order, agency directive or OMB Circular, if not otherwise applicable to the use of the CDBG-MIT funds provided herein or to the particular projects performed under this Agreement, even though it may be referenced in this Agreement or in the Appendices.

#### **L. Subrogation & Assignment**

If the Subrecipient receives funds from the CDBG-MIT Program and whether, before, during or after Project initiation, funds from other sources are provided to the Subrecipient for all activities of the projects under this Agreement resulting in a potential duplication of benefits regarding the Project funds, the Subrecipient agrees to notify the Grantee regarding such potential duplication. As provided in this Agreement in Section X (B) (Section 312 of the Stafford Act), the Subrecipient agrees to reimburse the Grantee if it later receives other disaster assistance for the same purposes as under this Agreement.

#### **M. No Third-Party Beneficiary**

Nothing herein is intended, and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement. This provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG-MIT funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

#### **N. No Assignment**

Neither Party may transfer or assign this Agreement or transfer or assign any of its rights or assign any of its duties under the Agreement without the express prior written consent of the other Party. However, if the Parties mutually agree to an assignment, all rights and obligations set forth herein shall ensure to the benefit of the Parties and to their respective successors and assigns.

#### **O. Copyright**

No materials, including but not limited to reports, maps, documents, or plans produced as a result of this Agreement, in whole or in part, shall be available for copyright purposes to any other person. Any such material produced as a result of this Agreement that might be subject to copyright is the property of and all rights shall belong to the Parties unless the Parties agree otherwise in writing.

Software and other materials owned by the Subrecipient or a third party prior to the date of this Agreement and not related to this Agreement shall be and remain the property of the Subrecipient or third party.

The Parties will, where either Party believes necessary, provide information to undertake their responsibilities described herein. All records, reports, documents, and other materials delivered or transmitted shall remain the property of the transmitting Party and shall be returned, upon request, at termination, expiration or suspension of this Agreement.

**P. Delay or Omission**

No delay or omission in the exercise or enforcement of any right or remedy accruing to either Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

**Q. Severability**

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

**R. Guidance**

**1. Notices**

Any notice required to be given under, or in connection with this Agreement, shall be in writing and shall be hand-delivered, mailed, emailed or facsimiled. All such communications shall be transmitted to the addresses or numbers set forth below, or such other address or numbers as may be hereafter designated by either Party in written notice to the other Party compliant with this Section.

**To the GRANTEE (HFA):**

Attn: Eugene Jones, Jr.  
Mailing Address: 3202 Demara Plaza, Suite 200  
St. Thomas, VI 00802  
E-mail: ejones@vihfa.gov  
Phone: 340-777-4432  
Fax: 340-775-7913

**To the SUBRECIPIENT:**

VI Aqua Farm, LLC  
Attn: Mr. Duane Sydney  
Mailing Address: 253 Enfield Green Frederiksted, St. Croix,  
00840 US Virgin Islands  
Email: viaquafarm@gmail.com  
Phone: (470) 312-8916  
Fax:

**With Copy To:**

Dayna Clendinen  
Chief Operating Officer / Chief Disaster Recovery Officer  
Virgin Islands Housing Finance Authority  
3202 Demara Plaza, Suite 200,  
St. Thomas, VI 00802  
E-mail: dclendinen@vihfa.gov  
Phone: 340-777-4432  
Facsimile: 340-775-7913

## **2. Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with all applicable Federal and Territorial laws. Any legal action resulting from the implementation of this Agreement shall be brought and adjudicated in the U.S. Virgin Islands.

This Agreement and any amendments, exhibits or other formally incorporated documents constitutes the entire understanding and reflects the entirety of the undertakings between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

## **3. Entire Agreement**

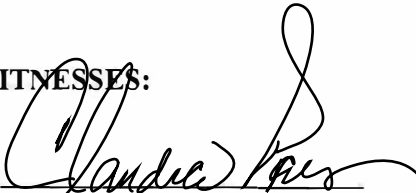
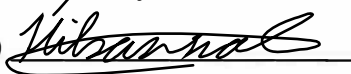
This Agreement and any amendments, exhibits or other formally incorporated documents constitutes the entire understanding and reflects the entirety of the undertakings between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

## **4. Binding Effect**

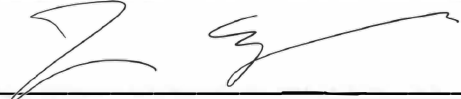
All the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to, and binding upon, their successors and/or assigns.

**IN WITNESS WHEREOF:** the parties hereto have hereunto set their hands and seals on the day and year first written above.

WITNESSES:

(1)   
(2) 

VIRGIN ISLANDS HOUSING FINANCE  
AUTHORITY, SUBRECIPIENT DEPARTMENT

BY:   
Eugene Jones, Jr.  
Executive Director

DATE: 4/14/2025

WITNESSES:


(1)   
(2) 

VI Aqua Farm, LLC

BY:   
[Printed Name and Title]

DATE: 04/07/2025

REVIEWED AND APPROVED FOR LEGAL SUFFICIENCY

 Special Counsel April 1, 2025  
Name and Title Date

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## **EXHIBIT A: SCOPE OF SERVICES**

The Subrecipient will prepare and submit all necessary documentation related to the program operations for VIHFA CDBG-MIT except necessary overall grant oversight documentation. The Project documentation demonstrates compliance with all eligibility requirements established in the VIHFA CDBG-MIT Subrecipient Management Manual, Financial Management Policy and Procedures, Procurement Policy and Procedures, Compliance and Monitoring Policy and Procedures, and program specific policy and procedures.

VIHFA will provide funding and technical assistance to the Subrecipient to complete the following tasks:

**Objective:** Purchase, ship, remove and install fencing to protect livestock and vegetation, as well as conduct land clearing.

### **Project Overview:**

- i. Purchasing, shipping, and transportation of fencing material
- ii. Removal of fencing
- iii. Land Clearing
- iv. Installation of Fencing

**EXHIBIT B:**  
**Project Deliverables: Key Activities, Timeliness, Performance Goals, and Budget**

1. Project Name: Farm Fencing
2. Project Award Amount: \$192,000.00
3. Period of Performance: April 1, 2025 to November 28, 2025

4. **National Objectives**

All activities funded with CDBG-MIT funds must meet the criteria for one of the CDBG program’s National Objectives, benefiting Low-Moderate Income Individuals to include the following sub-categories:

Low-Moderate Housing (LMH); Limited Clientele (LMC); Low-Moderate Job Creation and Retention (LMJ); and Low-Moderate Area (LMA). 50% of the funds must be used on LMI.

Both Parties certifies that all activities carried out under this agreement shall meet the following national objective(s) and satisfy the following criteria: **Activities Benefiting Low/Moderate Income Persons.**

5. **Key Activities, Timeliness & Performance**

The Subrecipient shall complete the activities required under this agreement in accordance with the following timeframes and performance goals associated with each of the activities:

- |                                     |                                  |
|-------------------------------------|----------------------------------|
| 1. Ordering and Receiving Materials | Timeline: 4/25/2025 to 6/25/2025 |
| 2. Fence Removal & Land Clearing    | Timeline: 7/2/2025 to 10/19/2025 |
| 3. Installation of Fencing          | Timeline: 7/9/2025 to 11/13/2025 |

Task	Key Activity	Performance Goal	Key Performance Indicators	Source Verification	Estimated Start	Estimated Completion
Phase 1: Ordering and Receiving Materials	Purchasing fencing materials	Procurement	Order Confirmation 15% Project Completion	Purchase orders	4/25/2025	5/4/2025
	Shipping materials to VI	Shipment	Shipping Confirmation 25% Project Completion	Shipping receipts	5/7/2025	6/21/2025
	Delivering materials to the job site	Delivery	Material Delivery 50% Project Completion	Delivery confirmations	6/22/2025	6/23/2025
Phase 2: Remove Old Fencing	Removal of old fencing from pasture #1	Timely Removal	Land clearing, Removal of old fencing (pastures 1-4). 75% Project Completion	Removal Records	7/2/2025	7/6/2025
	Removal of old fencing from pasture #2			Removal Records	8/7/2025	8/11/2025
	Removal of old fencing from pasture #3			Removal Records	9/7/2025	9/15/2025
	Removal of old fencing from pasture #4			Removal Records	10/16/2025	10/19/2025
Phase 3: Installation of Fencing	Installation of fencing in pasture #1	Installation	Completion of fencing installation for pastures (1 – 4) 100% Project Completion	Installation records, inspection reports	7/9/2025	8/6/2025
	Installation of fencing in pasture #2			Installation records, inspection reports	8/14/2025	9/6/2025
	Installation of fencing in pasture #3			Installation records, inspection reports	9/18/2025	10/15/2025
	Installation of fencing in pasture #4			Installation records, inspection reports		

\*Quarters are based on Calendar Years beginning January and NOT Fiscal Years

## **Reporting Benchmarks**

The Subrecipient shall submit regular monthly and quarterly progress and financial reports to the Grantee detailing the status of deliverables with a breakdown on project progress and meeting performance goals and timelines. Monthly reports are due by the 30<sup>th</sup> of each month for the preceding month. The Subrecipient shall meet the following benchmarks and report as indicated:

### **Project Benchmarks and Schedule:**

#### **1. Ordering and Receiving Materials**

- Goal: Purchasing, shipping, and transportation of fencing material
- Documentation: Purchase orders, shipping receipts, delivery confirmations
- Timeline: 4/25/2025 to 6/25/2025 (61 days)
  - Purchasing fencing materials: 4/25/2025 to 5/4/2025 (10 days)
  - Shipping Materials to VI: 5/7/2025 to 6/21/2025 (44 days)
  - Delivering Materials to the job site: 6/22/2025 to 6/23/2025 (1 day)
- Percentage: 15%
- Reporting Period: April 2025 to June 2025

#### **2. Remove Old Fencing**

- Goal: Land clearing and removal of fencing by sections in preparation for fence installation
- Documentation: Removal records, disposal receipts, land clearing receipts
- Timeline: 7/2/2025 to 10/19/2025 (109 days)
  - Land clearing and removal of old fencing from pasture #1: 7/2/2025 to 7/6/2025 (4 days)
  - Removal of old fencing from pasture #2: 8/7/2025 to 8/11/2025 (4 days)
  - Removal of old fencing from pasture #3: 9/7/2025 to 9/15/2025 (8 days)
  - Removal of old fencing from pasture #4: 10/16/2025 to 10/19/2025 (3 days)
- Percentage: 20%
- Reporting Period: July 2025 to October 2025

#### **3. Installation of Fencing**

- Goal: Installation of fencing around each pasture
- Documentation: Installation records, inspection reports
- Timeline: 7/9/2025 to 11/13/2025 (126 days)
  - Installation of fencing in pasture #1: 7/9/2025 to 8/6/2025 (27 days)
  - Installation of fencing in pasture #2: 8/14/2025 to 9/6/2025 (23 days)
  - Installation of fencing in pasture #3: 9/18/2025 to 10/15/2025 (28 days)
  - Installation of fencing in pasture #4: 10/22/2025 to 11/13/2025 (21 days)
- Percentage: 65%
- Reporting Period: July 2025 to November 2025

#### **1. Budget**

The Subrecipient shall complete all activities in this agreement in accordance with the appropriate project budget below. Each project must receive a preliminary review and approval from VIHFA prior to moving to an environmental review. Any amendments to the budget(s) must be approved in writing by both the Grantee and the Subrecipient. However, in no case shall any such amendments, revisions or reallocations exceed the total allocation of CDBG-MIT Funds without prior written consent of the Grantee. All budget costs must be reasonable, eligible, and allowable.

**A. Budget Table**

Budget Category	Project Type	Cost (Direct)
Small Business Mitigation	Installation of fencing	\$192,000.00
	<b>Total</b>	<b>\$192,000.00</b>

**B. Detailed Budget**

Detailed Budget Information (Enter Detail Budget Information below)

	CDBG-MIT BUDGET	OTHER SOURCES OF FUNDS (PT 1)	OTHER SOURCES OF FUNDS (PT 2)	OTHER SOURCES OF FUNDS (PT 3)	TOTAL COST
Project Cost Direct					0
-	\$78,022.52				78022.52
-	\$12,000				12000
-	\$101,977.48				101977.48
-					0
-					0
Subtotal Project Cost (Direct)					0
-					0
-					0
-					0
Total Project Cost					0
-					0
-					0
-					0
-					0
-					0
-					0
<b>TOTAL</b>	<b>192000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>192000</b>

**2. Performance and Timeline Requirements**

The Subrecipient shall complete the required activities under the Program Delivery/Deliverables, including 100% expenditure on allocated funds, within the timeframes outlined in this Appendix.

The Subrecipient agrees to comply with the projects’ draw-down request terms and agrees to use best efforts to comply with the benchmarks as outlined in the Reporting section of this agreement. Grant Funds not anticipated to be expended by the outlined deadline, or extended, are subject to recapture and reallocation to other eligible CDBG-MIT Projects areas and/or Territorial agencies.

This agreement and its terms and conditions shall remain in effect during any period that the Subrecipient has control over CDBG-MIT funds provided through this agreement, including program income as defined in 24 CFR 570.489(e), 83 FR 5844, and 83 FR 40314.

## EXHIBIT C 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>.

***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.***

### 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 wilful 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 DavisBacon 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 non-exempt 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 implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C. The 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 this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 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](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](http://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 leadbased 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](http://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](mailto: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.

## **EXHIBIT D GENERAL CONTRACT CONDITIONS**

In addition to applying to this Agreement, Subrecipient shall include the provisions of this Section in each Third-Party contract as applicable.

### **A. INDEPENDENT CONTRACTOR**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the Parties. In the event that Agency contracts with third parties, including any Subrecipient or Contractor, to perform any of the services to be performed hereunder, such third parties shall at all times remain an "independent contractor" with respect to the provision of such services. The VIHFA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, with respect to such third-party contracts or Grant Fund Sub-Agreements.

### **B. HOLD/HARMLESS/INDEMNITY CONTRACTORS/SUBCONTRACTORS**

To the extent that Agency is authorized to and utilizes the services of any third parties in performance of its duties and obligations in implementing the Projects described in this Agreement, any contract entered into shall contain a provision that the Contractor and/or Subcontractor shall hold Agency and the VIHFA harmless and defend and indemnify the Agency and the VIHFA against any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor and/or Subcontractor's performance or nonperformance of the services.

### **C. MECHANIC'S LIEN**

Contractor agrees to protect, defend, and indemnify Agency and VIHFA from any claims for unpaid work, labor, or materials with respect to Contractor's Performance. Final payment shall not be due until the Contractor has delivered to the Agency a complete release of all liens 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 Agency indemnifying Agency against any and all liens.

### **D. WORKER'S COMPENSATION**

Agency shall require its Contractors/Vendors to provide Workers' Compensation Insurance coverage for all its employees involved in the performance of any projects undertaken thereto under this Agreement.

### **E. PRELIMINARY INSPECTION**

Prior to requesting a final inspection, the Contractor shall notify both VIHFA and SUBRECIPIENT of the anticipated completion date so that any major defects or deficiencies may be pointed out to the Contractor for correction prior to the final inspection.

#### F. FINAL INSPECTION

The Scope of Work shall be considered complete upon acceptance by the Agency after a final inspection conducted by the Subrecipient and/or VIHFA (upon VIHFA's request to also conduct a final inspection).

#### G. MAINTENANCE OF AREA/FINAL CLEAN-UP & REMOVAL OF DEBRIS

Contractor agrees to maintain the work area free from major obstructions/hazards to the greatest extent possible, and to always ensure safe access to the project site. The contractor agrees to remove all construction debris and surplus material from the property. The Contractor shall remove all construction related debris material from the construction site.

#### H. INSURANCE & BONDING

Agency shall require a Contractor to maintain liability insurance for protection against claims for damages because of bodily injury or death, claims for damages, to property which may arise out of or result from the Contractor's operation under a contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them. This specific coverage amount for each project shall be identified in the ensuing contract for each specific project and the Contractor shall, upon request, present the Agency with a certificate of such insurance.

#### I. AFFIRMATIVE ACTION PLAN

In order to comply with Section 3 and Executive Order 11246, the U.S. Department of Housing and Urban Development requires that all contractors develop and implement an Affirmative Action Plan. This plan is a series of forms and statements, which shows specific steps taken by the contractor to promote Equal Opportunity and the utilization of area residents and business in the implementation of this Contract. This plan must be submitted to the Agency and VIHFA.

#### J. SAFETY

Agency shall always exercise proper precautions for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of its performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and the Agency shall take or cause to be taken such additional safety and health measures as the Agency may determine to be reasonably necessary.

The Agency shall provide safety insurance for its employees and shall require all Contractors and Subcontractors to provide safety insurance for their employees.

**K. SECTION 106 COMPLIANCE**

The Contractor shall ensure that areas of archaeological sensitivity will not be disturbed during construction. No heavy equipment shall be used in any area which has been determined to be an area of archaeological sensitivity. The Contractor agrees that, if there is any question related to the archaeological value or historic designation of the site in general or any specific features on the site, it shall seek guidance from the State of Historic Preservation Office of the Department of Planning and Natural Resources before undertaking any work.

**L. CONTRACTOR'S REPRESENTATIONS**

The Contractor shall warrant that it is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract. Contractor shall further represent that it is fully equipped, competent, and capable of performing the work and is available to perform such work.

The Contractor will warrant that it, and any subcontractor, is eligible to receive contract awards using federally appropriate funds and that it is not suspended or debarred from entering contracts with any federal agency.

In the event the Contractor, or sub-contractor, misrepresents its eligibility to receive contract awards using federal funds, Agency agrees that said contractor or sub-contractor shall not be entitled to any payment for any work performed under this Contract and that it shall require the contractor or sub-contractor to promptly reimburse any progress payments heretofore made.

Nevertheless, this provision does not discharge Agency or VIHFA from their respective due diligence and undertaking its own independent search under "SAMS" to determine a Contractor's or sub-contractor's eligibility to receive contract awards using federal funds.

**M. FALSE CLAIMS**

The Contractor/vendor will warrant that it shall not, with respect to this Contract, make or present any false claim upon or against the Agency. The Contractor will acknowledge that making such a false, fictitious, or fraudulent claim is an offense under the Virgin Islands law.

The Contractor will acknowledge that its Contract is funded, in whole or in part, by federal funds. The Contractor will warrant 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 will acknowledge that making such a false, fictitious, or fraudulent claim is a federal offense.

**EXHIBIT E**  
**NON- CONFLICT OF INTEREST: SUBRECIPIENT**

**Subrecipient Non-Conflict of Interest Certification**

By signing this form, the Subrecipient certifies that:

1. To the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational or personal conflict of interest, for the organization or any of its staff, and that the Subrecipient has and will disclose all such relevant information if such a conflict of interest appears to exist. Further:
  - No member of staff VI Aqua Farm has any financial interest, whether implicit or explicit, in this agreement or potential contracts, purchases, or any other commercial transactions that may derive from this agreement.
  - No staff member has requested the authorized representative/organization or accepted from the authorized representative/organization, implicit or explicit, for any of their family unit or persons: gifts, bonuses, favors, services, donations, loans, or any item of monetary value in exchange for activities and actions of this agreement.
  - No staff member has accepted anything of economic value based on this agreement from any person or entity as payment for favorable decision to that person or entity for any activity that may derive from this agreement.
  - No staff member has requested the authorized representative or organization, implicit or explicit, for themselves, any member of their family unit, any other person, business, or entity, something of monetary value including gifts, loans, promises, favors, or services in exchange for performance of the staff member in my favor or of my organization.
2. The Subrecipient has and will continue to exercise due diligence in identifying and removing or mitigating, to the VIHFA's satisfaction, potential or apparent conflict of interest.

I hereby certify under the penalty of perjury that the foregoing is complete, true, and correct.

Name and Title of Authorized Representative



Signature

04/07/2025

Date

Duane Sydney

Print Name

Member

Title