

**RECONSTRUCTION/REHABILITATION  
CONSTRUCTION SERVICES CONTRACT**

**Between**

**VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**

**&**

**FLS DEVELOPMENT, LLC**

THIS CONTRACT is made as of the 18 day of October 2021, by and between the VIRGIN ISLANDS HOUSING FINANCE AUTHORITY, an autonomous instrumentality of the Territory of the United States Virgin Islands, having its principal place of business at 3202 Demarara Plaza, Suite 200, St. Thomas, U.S. Virgin Islands 00802 (hereinafter the "Authority"), and FLS DEVELOPMENT, LLC, whose address is 392 Anna's Retreat, St. Thomas, U.S. Virgin Islands 00802 (hereinafter the "Contractor").

**WITNESSETH**

**WHEREAS**, the Authority is in need of the services of a Contractor to provide the Authority's General Construction Contractor Services/repairs needed to certain property VI-RRR-01505 on St. Croix, U.S. Virgin Islands as outlined in Appendix(s) B, C, and D and incorporated herein (the "Property"); and

**WHEREAS**, the Property was damaged by Hurricanes Irma and/or Maria and this Contract is for the reconstruction/rehabilitation of the dwelling required to bring the property back to pre-hurricane status; and

**WHEREAS**, the services are more particularly described in the Scope of Work, attached hereto as Appendix(s) B, C and D, and incorporated herein; and

**WHEREAS**, the Contractor represents that it is willing and capable of providing such services.

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

1. **SERVICES/WORK TO BE PERFORMED:** The Contractor will provide the services described in Appendix(s) B, C and D, attached hereto. The Contractor agrees to furnish all labor, equipment, materials and services necessary to perform and complete the work. The Authority and the Contractor may agree to changes in or additions to the Scope of Work. However, no changes shall be valid unless in writing and signed by both parties in the form of a executed Change Order.

2. **TERM:** The Contractor agrees that time is of the essence and will commence work no less than Ten (10) days after the issuance of the Notice to Proceed.

Contractor: 

Authority: 

(b) All work shall be completed no later than Seventy-Five (75) calendar days from the Notice to Proceed. The Authority shall extend the completion date if there are delays caused by acts of Nature, unavoidable circumstances, or the negligence of the Authority or its agents or employees other than the Contractor. The extension shall equal the length of the delay by any of the above factors. However, there shall be no extensions to the completion date without the prior written consent of the Authority. The Authority reserves the right to modify and/or terminate the Contract if the Contractor fails to perform in a manner consistent with the terms of the Contract.

3. **COMPENSATION:** The Authority, in consideration of the satisfactory performance of the services described in Appendix(s) B, C and D, agrees to pay the Contractor the sum of FORTY-SIX THOUSAND SIX HUNDRED TWENTY-THREE DOLLARS AND SIXTY-FOUR CENTS (\$46,623.64). The payment shall be made as follows:

- a. Pre-Construction Cost: 10% of the total Contract Amount, which is: FOUR THOUSAND SIX HUNDRED SIXTY-TWO DOLLARS AND THIRTY-SIX CENTS (\$4,662.36) to secure the necessary equipment, labor and materials to begin the project, based upon the Scope of Work (Appendix(s) B, C and D) and should be paid upon issuance of the Notice to Proceed. Contractors are required to submit receipts and other supporting documentation, as required, to demonstrate costs incurred.
- b. 10% is withheld from each draw for retainage, excluding pre-construction cost, and any applicable gross receipts taxes.
- c. Any Retainage due the Contractor for work performed and the final payment will be disbursed on the Final Disbursement Date subject to a Final Inspection and acceptance of the work as outlined in Paragraph 38.

4. **LIQUIDATED DAMAGES:** It is hereby agreed by the parties that in the event the Contractor has not completed the scope of work under the terms set forth in this Contract, liquidated damages of \$500.00 for each calendar day or portion thereof shall be due to the Authority. The liquidated damages shall first be deducted from any contract monies due but not yet paid, to the extent available.

(b) Additionally, the Contractor may be liable for the additional rental and/or storage costs for any relocated tenants if the scope of work is not completed within the time frame set forth in the Contract. VIHFA may deduct and retain out of the monies, which may become due hereunder the amount of any such liquidated damages, and in case the amount which may become due hereunder shall be less than the amount of the liquidated damages due to VIHFA, the Contractor shall be liable to pay the difference.

5. **PERFORMANCE BOND:** The undersigned further agrees to execute and deliver to VIHFA at the time the contract documents are executed, a Performance Bond with Power of Attorney on the forms provided, in an amount of \$ N/A by a surety or insurance company currently on the U.S. Department of the Treasury's Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a U.S. Virgin Islands domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide 10, or by an insurance

Contractor: 

Authority: 

V21-05

company that is either domiciled in the U.S. Virgin Islands or owned by US, Virgin Islands residents and is licensed to write surety bonds.<sup>1</sup>

6. **PAYMENT PROCESS:** Invoices shall be submitted on a timely basis. Invoices shall be organized so that services associated with each construction phase are clearly identified in separate detailed listings of charges. Payment of invoices must be approved by the Authority or its designee after inspection. The Authority will make payments within forty-five (45) days after invoice approval and acceptance of work after the inspections noted in Paragraph(s) 37 and 38.

(a) **INDEMNIFICATION:** Should the Contractor, after receipt of payment of invoices by the Authority not timely pay all persons who have fulfilled their obligations to perform labor and/or furnish materials in the prosecution of the work provided for herein, including by way of example workmen, laborers, furnishers of materials, machinery, equipment and fixtures, then Contractor agrees to indemnify the Authority for such payment(s). Timely payments from Contractor to its subcontractors shall mean within ten (10) business days of receiving payment from the Authority. Pursuant to Paragraph 16(b), Contractor shall obtain an executed lien waiver upon making payments to all persons who have fulfilled their obligation to perform labor and/or furnish materials in the prosecution of the work provided herein.

7. **WORKMANSHIP/WARRANTY:** The Contractor will complete all work in a substantial and workmanlike manner according to standards and practices in the Contractor's trade for the construction work to be performed. The work shall conform to all applicable codes and regulations which apply to the work to be performed whether or not covered by the specifications and drawings for the work. The Contractor warrants that the final product of Contractor's work shall be fit for the purposes for which it is intended. Contractor will 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 Homeowner and the Authority.

8. **DEFECTIVE WORK:** The inspection of work shall not relieve the Contractor of any of its obligations to fulfill the terms and conditions of the Contract as herein prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the Authority's Project Manager 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 therefor, the Contractor shall forthwith make good such defect in a manner satisfactory to the Authority's Project Manager and shall replace at its own expense damaged or unsuitable materials with the new material of satisfactory quality.

9. **COMPLETION & EXTENSION OF CONTRACT WORK:** The Contract shall be completed on or before the date of completion as set forth in Appendix(s) B, C and D; and the Authority has accepted all work. If the satisfactory execution of the Contract shall require work or materials in substantially greater amounts or quantities than those set forth in the plans or scope of work, then the Contractor shall submit a Request for Information and other supporting documentation which substantiate the additional work, and

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

Contractor



Authority



V21-05

any associated increase in cost and time, if applicable. All Change Orders shall be in writing and shall be submitted to the Authority for approval. The Change Order shall be fully executed prior to undertaking the additional work. No allowance shall be made for unauthorized delays or suspension of the work.

10. **ADDITIONAL WORK:** The Authority, Homeowner and Contractor understand that Program funds are solely for the work authorized by the Program and described in Appendix(s) B, C and D; and shall not be used for other purposes or improvements on the Property that are not part of the Project. Additional work agreed upon by the Homeowner and Contractor shall not be initiated until after all work identified in the Scope of Work has been completed and passed final inspection.

11. **MOLD ASSESSMENT AND REMEDIATION:** Mold assessment will be performed by general contractors procured through the mini-bid process. A visual inspection is the most important initial step in identifying a possible mold problem and in determining remedial strategies. Visual inspections should also include observations of hidden areas where damages may be present, such as crawl spaces, attics, and behind wallboard to the extent feasible without destructive testing or removal of apparently undamaged building materials. The extent of any water damage and mold growth should be visually assessed and the affected building materials identified.

Areas where mold was, or is, identified as part of the initial site inspection (ISI), the Walk Through or during construction will be required to be remediated by the general contractors. If a visual inspection by the general contractor reveals the presence of mold, photographs should be provided to substantiate the claim and then remediated.

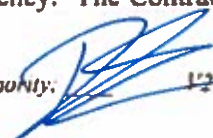
(a) **REMEDICATION:** Currently there are no governmental standards pertaining to acceptable levels of indoor airborne mold spores and structures. Mold is present everywhere in the environment. For all projects, identified moisture sources should be eliminated prior to further remediation. Post remediation dehumidification may be necessary to dry the remaining structural framing materials prior to any rehabilitation. In cases where this occurs the general contractors will incorporate the cost into the bid proposal. Materials harboring mold are expected to be cleaned or replaced by the general contractor.

12. **ACCEPTANCE OF PLANS AND CONSENT TO PERFORM THE PROJECT:** Contractor hereby acknowledges that it has been presented the Scope of Work ("SOW") for the Project. Contractor has fully reviewed the SOW, which specifies the construction and other activities, including any environmental mitigation as outlined in the Mitigation Measures Report, attached hereto as "Appendix C", to be conducted by Contractor on the Property. Contractor acknowledges and agrees that it shall not add tasks to the SOW unless authorized by the Authority.

13. **CONTRACTOR'S REPRESENTATIONS:** The Contractor warrants 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 further represents that it is fully equipped, competent, and capable of performing the work and is available to perform such work.

The Contractor warrants that it is eligible to receive contract awards using federally appropriated funds and that it is not suspended or debarred from entering into contracts with any federal agency. The Contractor

Contractor 

Authority:  1/21-05

shall include this provision in each of its subcontracts hereunder, a copy of which shall be provided to the Authority upon execution. In the event the Contractor or sub-contractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor 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.

**14. REPRESENTATIONS, WARRANTIES, AND COVENANTS BY CONTRACTOR:**

The Contractor represents, warrants, and covenants as follows:

- (a) Contractor is duly organized and existing and authorized, qualified and licensed to do business in the United States Virgin Islands.
- (b) Contractor will, during the construction period of the project, remain a General Contractor, engaged in the business of construction, will remain in good standing and qualified to do business under the laws of the Territory, including maintenance at all times of a valid V.I. business license, and will not cease doing business, dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it.
- (c) Contractor has the power to execute, deliver and perform, and enter into the transactions contemplated by this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement.
- (d) The execution and delivery of this Agreement, the consummation of the transaction contemplated hereby and the fulfillment or compliance with the terms and conditions of this Agreement do not and will not conflict with or result in a breach of any of the terms, conditions, or provisions of any legal restrictions or any agreement or instrument to which the Contractor is now a party or by which it is bound or constitute a default under any of the foregoing.
- (e) No information, statement, or report furnished in writing by the Contractor in connection with the negotiation of, or performance under, this Agreement and the consummation of the transactions contemplated hereby contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading.
- (f) That it has obtained all the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

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Authority:



V21-05

15. **CONDITION OF PREMISES:** The Contractor agrees to keep the Premises orderly, and to remove daily all debris as needed during the Project in order to maintain safe working conditions and leave the area in a neat and clean condition. The Contractor agrees to maintain the work area free from major obstructions/hazards to the greatest extent possible and to ensure safe access at all times.

16. **CONTRACTOR, MATERIALMEN OR MECHANICS' LIENS:** Neither Homeowner nor the Authority will suffer or permit any mechanics or materialmen's liens to be filed or otherwise asserted against the Property or against any funds due to Contractor and will promptly seek discharge of any such lien filed. Contractor, subcontractors, suppliers, vendors, trades and any other persons or entities performing work on the Property are strictly prohibited from placing liens on said Property. Contractor shall inform all persons or entities of such strict prohibition. Contractor is responsible for the removal, and any associated expense involved therewith, of any lien placed on the subject Property by the Contractor, or any subcontractor, supplier, vendor, trade or other person or entity performing work for the Contractor, irrespective of the fault or cause of such attachment.

Additionally, pursuant to V.I. Code Title 28, Chapter 12, Section 254 "a construction lien does not exist ... for work, services, materials, or equipment, in connection with the improvement of a residential dwelling under an emergency home repair program property or other home-repair or construction program administered by the Government of the Virgin Islands or any instrumentality of the Government of the Virgin Islands.

(b) **LIEN WAIVERS:** The Contractor agrees to protect, defend and indemnify the Authority from any claims for unpaid work, labor or materials with respect to the Contractor's performance under this Contract and shall execute a Lien Waiver, from both the Contractor and all subcontractors, upon receipt of each payment. Final payment shall not be due until the Contractor has delivered to the Authority 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 the Authority indemnifying the Authority and the Homeowner against any and all liens.

17. **INDEPENDENT CONTRACTOR:** The Contractor shall perform this Contract as an independent Contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status. The Contractor shall be responsible for the supervision of Contractor's employees, subcontractors, and authorized representatives. All workers must be competent and skilled in their work.

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

Contractor



Authority



1-21-05

19. **FORCE MAJEURE:** Neither Party shall be liable for any delay or failure in performance beyond its control resulting from Acts of God or force majeure (extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party). The Parties shall use reasonable efforts to eliminate or minimize the effect of such events on their respective duties under the Contract. Contractor shall be entitled to an equitable adjustment in Work Order schedules and unit prices in the foregoing circumstances.

20. **INDEMNITY AND LIMITATION OF LIABILITY:** Contractor shall be fully liable for the actions of its agents, employees, partners or sub-contractors and shall fully indemnify and hold harmless the Authority, its Board of Directors, agents and employees, from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, its agents, employees, partners or sub-contractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authority.

Contractor shall agree to defend, indemnify and hold the Authority harmless from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges, and expense (including attorneys' fees) and causes of action of whatsoever character which the Authority may incur, sustain, or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of the Authority. Contractor shall provide the Authority a copy of Contractor's insurance binder evidencing coverage for liability and personal injury.

Contractor will indemnify, defend and hold the Authority, its Board of Directors, agents and employees, harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs for infringement of a United States Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the Authority shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Authority or its Board of Directors, agents and employees may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Authority shall require.

Unless otherwise specifically enumerated herein or in the Work Order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.

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Authority: \_\_\_\_\_

V21-05

The Authority may, in addition to other remedies available at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, or costs asserted by or against them.

**21. WORKMAN'S COMPENSATION.** The Contractor shall provide Workman's Compensation Insurance coverage for all employees involved in the performance of this Contract.

**22. INSURANCE AND BONDING:** The Contractor shall maintain liability insurance in the amount of \$300,000 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 the contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them.

**(a) VERIFICATION OF COVERAGE:** Contractor shall furnish the Authority with certificates of insurance reflecting proof of required coverage. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and the certificates are to be received and approved by the Authority before work commences.

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

Contractor shall include all subcontractors as insureds under its policies or shall be responsible for verifying and maintaining the certificates provided by each Subcontractor. Subcontractors shall be subject to all of the requirements the Authority herein. The Authority reserves the right to request copies of subcontractor's certificates at any time.

**23. SUB-CONTRACTOR:** Contractor may enter into one layer of subcontracts with third parties ("Sub-Contractors") for the performance of any part of specialized Contractor's duties and obligations (i.e. electrical, plumbing, etc.). In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the Authority for any breach in the performance of Contractor's duties. Sub-Contractor's Contracts must meet all contracting, indemnity, insurance and regulatory compliance requirements. The Parties hereby agree that any non-compete Contract or similar Contract with any Sub-Contractor(s) seeking to restrain the ability of the Sub-Contractor to perform any services for the Authority shall be deemed unenforceable, null and void, to the extent of such non-compete provision, but without invalidating the remaining provisions of the contract with the Sub-Contractor.

**24. ASSIGNMENT OF THE PROJECT:** The Contractor shall not subcontract or assign this project without the prior written consent of the Authority.

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Authority:  V21-05



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


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

27. **TERMINATION:** Either party will have the right to terminate this Contract with or without cause on thirty (30) days written notice to the other party specifying the date of termination.

(a) **TERMINATION FOR CAUSE:** Except as hereafter provided, the Authority shall have the immediate and automatic right to terminate this Agreement upon the occurrence by Contractor of a material breach of any term, condition, representation, warranty or covenant of this Agreement, or the Proposal. A material breach shall include, but not be limited to, the following, if applicable: (1) submission to the Authority of reports which are incorrect or incomplete in any material respect; (2) debarment, or the threat thereof, by any federal or local government agency or department; (3) failure to pay creditors and subcontractors which may cause the placement of liens on the Authority's property; (4) failure to maintain any bonds and insurance if required under this Agreement; (5) offering of bribes, threatening or abuse of program participants or failure to comply with applicable federal or local requirements; (6) abandonment of the Project by Contractor for a period of seven (7) days; (7) failure to diligently obtain skill specific permits and approvals for the Project; (8) if the Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of creditors, or if a trustee or receiver is appointed on account of its insolvency; (9) if the Contractor persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials; (10) failure to correct work which is not in accordance with the final construction drawings and specifications; or (11) persistent disregard of the laws, rules, regulations or orders of any public authority having jurisdiction; (12) failure to utilize industry standards in a method or installation; (13) failure to comply with the approved Scope of Work by adding items without approval or by failing to provide materials and/or workmanship in accordance with the Plan; and (14) failure to adhere to standards and practices of phases within the Project.

(b) **PARTIAL TERMINATION:** The performance of work under this Contract may be terminated by the Authority in part, whenever the Authority shall deem such termination advisable. This partial termination shall be affected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties of this Contract are terminated and the date upon which such termination

Contractor: 

Authority:  V21-05





becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) days' notice.

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

29. **FALSE CLAIMS:**

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

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

30. **SECTION 3:** This Contract is 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 possible 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.

31. **EXECUTIVE ORDER 11246 NON-DISCRIMINATION:** This Contract is subject to the requirements of Executive Order 11246; hence the Contractor shall not discriminate against any employee or applicant because of race, color, religion, sex, or national origin. Such actions will include but shall not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff, or termination; rates of pay or other forms of compensation. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

32. **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 businesses in the implementation of this Contract. This plan must be submitted to the Authority at the following address: Virgin Islands Housing Finance Authority, 3202 Demarara Plaza, Suite 200, St. Thomas 00802.

33. **FEDERAL LABOR STANDARDS PROVISIONS:** All laborers and mechanics employed upon the work 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

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Authority:



V21-05

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 Contractor and sub-contractors shall submit copies of weekly payroll forms and cancelled checks to the Authority.

34. **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 relative 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 Division of Historic Preservation of the Department of Planning and Natural Resources before undertaking any work.

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

36. **WARRANTY OF NON-SOLICITATION:** The Contractor expressly warrants that it has not employed any person to solicit or obtain this Contract on its behalf, or cause or procure the same to be obtained upon compensation in any way, contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by Contractor hereunder, and that it has not, in estimating the Contract price demand included any sum by reason of such brokerage, commission or percentage, and that all monies payable to it hereunder are free from obligation to any other person for services rendered, supposed to have been rendered, in the procurement of this Contract. Breach of this warranty shall give the Authority the right to terminate this Contract, or in its discretion, to deduct from the Contract price or consideration the amount of such commission, percentage, brokerage or contingent fees.

37. **PRELIMINARY INSPECTION(S):** All work will be subject to periodic inspections by the Authority or the Authority's designee. Prior to request for final inspection, the Contractor shall notify the Authority's Project Manager of the anticipated date of completion so that any major defects or deficiencies may be pointed out to the Contractor for correction prior to the final inspection.

38. **FINAL INSPECTION:** The Scope of Work shall be considered complete upon acceptance by the Authority after a final inspection conducted by the Homeowner and the Authority.

39. **RECORDS:** The Contractor shall maintain documented, precise records of time and/or money expended under this Contract.

40. **AMENDMENTS**

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Authority:  1/21-05

(a) No amendment(s), modifications, or changes shall be made to this Contract unless Contractor delivers such proposed amendment(s) to the Authority for approval prior to the execution of the Amendment to the Contract.

(b) Amendments must make specific reference to this Contract, must be in writing, and signed by a duly authorized representative of the parties of this Contract. Such amendments shall not invalidate this Contract, nor relieve or release Contractor from its obligations under the Agreement or the Contractor from its obligations under this Contract.

(c) Contractor, upon recommendation of the Authority, may amend this Contract to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the Scope of Work to be undertaken as part of this Contract, Schedule of Values, or the project schedules, such modifications will be incorporated only by written amendment approved by the Authority and signed by both the Authority and Contractor.

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

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

Contractor: FLS Development, LLC  
4392 Anna's Retreat  
St. Thomas, U.S. Virgin Islands 00802  
Attention: Franklin Holmes, President

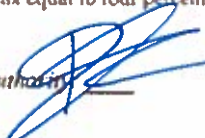
Either party may, by like notice, at any time and from time to time, designate different addresses to which notices shall be sent. Notices given in accordance with these provisions shall be deemed received when mailed.

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

(a) **GROSS RECEIPT TAXES:** Title 33 V.I.C. Ch.3, §44, as amended<sup>2</sup>, requires the Authority, when making a payment under this Contract, to deduct and withhold from such payments, gross receipts

<sup>2</sup> (a) The Government of the Virgin Islands, including its instrumentalities, agencies and public corporations, when making a payment as defined under subsection (b) of this section, to any person, partnership, firm, corporation, or other business association that is subject to the payment of gross receipts tax under the provisions of this title, shall deduct and withhold from such payment gross receipts tax equal to four percent of such

Contractor: 

Authority:  V'21-05

taxes as required by law at 33 VIC Section 43(a) for each payment for Work performed in the Virgin Islands. It is agreed between the Parties that for the purposes of complying with Title 33, Ch. 3, Section 44 of the Virgin Islands Code, the Authority shall withhold and forward to the Virgin Islands Bureau of Internal Revenue ("VIBIR") such amount as required by the law at 33 VIC Section 43(a) or any amendments thereto.

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

43. **GOVERNING LAW AND VENUE:** This Contract shall be governed by and construed in accordance with the laws of the Territory of the United States Virgin Islands and venue shall be in the United States Virgin Islands. Venue for any action between the Authority and Contractor which relates to this Contract shall be in the United States Virgin Islands.

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

45. **ENTIRE CONTRACT:** This Contract constitutes the entire Contract between the parties hereto, and all prior understandings or communications, written or oral, with respect to the work to be done under this contract, are merged herein.

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

47. **FEDERAL CROSS CUTTING MEASURES:** All contracts to be funded under the CDBG-DR program requires the inclusion of federal cross-cutting requirements as part of the conditions of the contract. These federal cross-cutting requirements are attached hereto as Appendix "A".

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payment. Such tax shall be paid to the Virgin Islands Bureau of Internal Revenue within ten days of the last day of the calendar month during which such tax was withheld on forms to be provided by the Virgin Islands Bureau of Internal Revenue.

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

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

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


Contractor: 

Authority: 


V21-05

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


WITNESSES:

  
Signature  
Sheldon DeGasperd  
Print Name

FLS DEVELOPMENT, LLC

  
Franklin Holmes, President  
DATE: 10/18/21

WITNESSES:

  
Signature  
LASHONDA HOLMES  
Print Name

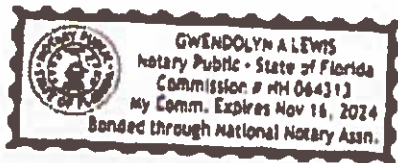
ACKNOWLEDGMENT

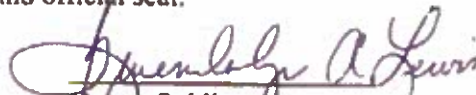
State of Florida  
TERRITORY OF THE U.S. VIRGIN ISLANDS gsl )  
County of Hillsborough ) ss:  
DISTRICT OF gsl )

On this 18<sup>th</sup> day of October, 2021, before me, the undersigned officer, personally appeared FRANKLIN HOLMES, who acknowledged himself to be the person whose name is subscribed to within this agreement, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of FLS DEVELOPMENT, LLC as Contractor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)



  
Notary Public  
Commission Expires: 11/16/2021

Contractor



Authority:

 V21-05



Reviewed for Legal Sufficiency:  
  
Denise Rhymer  
Denise Rhymer, Esq.  
  
Dated: 19th day of October, 2021

WITNESSES:

[Signature]  
Signature  
Rob Zindy Armstrong  
Print Name

VIRGIN ISLANDS HOUSING FINANCE  
AUTHORITY  
[Signature]  
Daryl Griffith, Executive Director  
DATE: 10/29/2021

WITNESSES:

[Signature]  
Signature  
Nichelle Davis  
Print Name

ACKNOWLEDGMENT

TERRITORY OF THE VIRGIN ISLANDS )

) ss:

DIVISION OF ST. CROIX )

On this 28<sup>th</sup> day of October, 2021, before me, the undersigned officer, personally appeared DARYL GRIFFITH, who acknowledged himself to be the Executive Director of the Virgin Islands Housing Finance Authority, being authorized to so do, executed the foregoing instrument for the purposes therein contained by signing the name of the Authority as Executive Director.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

(SEAL)



[Signature]  
Notary Public  
Commission Expires:

Claudia Y. Parson  
Government Notary  
St. Croix, U.S. Virgin Islands  
GNP-13-20  
Commission Expires At the Pleasure of  
the Lieutenant Governor

[Signature]  
V21-05

*Attachments:*

Appendix A: HUD Federal Cross Cutting Methods

Appendix B: Property Address and Scope of Work

Appendix C: Mitigation Measures Report

Appendix D: Finish Selection Form

Contractor:



Authority:



V21-015

## APPENDIX A: HUD FEDERAL CROSS CUTTING METHODS

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

### 1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract 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 contract shall forthwith be physically amended 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

The Authority 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 the Authority. The Contractor/Subcontractor shall cooperate with all the Authority 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

Contractor 

Authority  V21-05

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least 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 ARFA 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 CFR 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.

Contractor



Authority



V21-015

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 the Authority 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 the Authority any additional information necessary for the Authority to fully assess and address such actual or potential conflict of interest. The Contractor/Subcontractor shall accept any reasonable conflict mitigation strategy employed by the Authority, 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.

Contractor 

Authority  V21-05

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 the Authority 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 the Authority.

18. INDEMNIFICATION

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

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

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-

Contractor: 

Authority:  V21-05

Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

20. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

21. DAVIS-BACON ACT

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

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

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

22. TERMINATION FOR CAUSE

If, through any cause, the Contractor/Subcontractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor/Subcontractor shall violate any of the covenants, agreements, or stipulations of this contract, the Authority 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 the Authority, become the Authority'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 the Authority for damages sustained by The Authority by virtue of any breach of the contract by the Contractor/Subcontractor, and the Authority 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 the Authority from the Subcontractor is determined.

Contractor: 

Authority:  V21-015

23. TERMINATION FOR CONVENIENCE

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

22. 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.

Contractor: 

Authority: 

V21-05



- 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 in excess of \$10,000, 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.

24. 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 CFR 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.

Contractor



Authority



V21-05

- 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.

Contractor:



Authority:



V21-05

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 with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

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

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (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.

Contractor: 

Authority:  V21-05

- (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 the Authority 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 his bid, execute such contractual documents as may be required within the time specified.
- (2) *A performance bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's/Subcontractor's obligations under such contract.
- (3) *A payment bond on the part of the Contractor/Subcontractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (As required by applicable thresholds)

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to

Contractor



Authority



V21-05

this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- C. The *Contractor/Subcontractor* agrees to send to each labor organization or representative of workers with which the *Contractor/Subcontractor* has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the 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.
- D. The *Contractor* agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, 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 135. The 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 135.
- E. The *Contractor/Subcontractor* will certify that any vacant employment positions, including training positions, that are filled: (1) after the *contractor/subcontractor* is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the *Contractor/Subcontractor's* obligations under 24 C.F.R. part 135.
- F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

31. FAIR HOUSING ACT

*Contractor/Subcontractor* 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.

Contractor: 

Authority: 

V21-05

### 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.

### 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 can only be invoiced once approved by the Executive Director. 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.

Contractor:



Authority:



V21-05

36. LEAD BASED PAINT

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

37. ENVIRONMENTAL REVIEW RECORD

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

38. FLOOD INSURANCE REQUIREMENTS

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

39. DUPLICATION OF BENEFITS

CDBG-DR funding intends to address the unmet needs of a community. The funds are supplemental to primary forms of assistance, including private insurance and FEMA funds. To avoid duplicative assistance and potential de-obligation of funding, Subrecipient must utilize all possible funding sources before applying CDBG-DR dollars to a project. CDBG-DR programs are typically implemented after temporary disaster assistance programs, such as FEMA Individual Assistance which are not intended to make someone whole. 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

Contractor: 

Authority:  V21-05

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 FR 40314; 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 FR 5844. Additionally, per 83 FR 5844, the provisions at 24 C.F.R. § 570.494 and 24 C.F.R. § 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.

Contractor:



Authority:



V21-05



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.

(3) The plan shall provide one-for-one replacement units to the extent required by § 42.375.

Contractor:



Authority:

