

APPENDIX D: PROJECT AGREEMENT No. I-IRR-WMA-CONCORDIA

Project Name: Concordia Convenience Center

This Agreement is by and between the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY** (“VIHFA” or “Grantee”), a body corporate and politic constituting a public corporation and independent instrumentality of the Government of the Virgin Islands, at 3202 Demarara Plaza, Suite 200, St. Thomas 00802, the **VIRGIN ISLANDS WASTE MANAGEMENT AUTHORITY** (“VIWMA” and/or Agency), an Agency of the Government of the Virgin Islands, at #252 Estate Glynn, Kingshill, V.I. 00850, who are herein jointly referred to as the “Parties” or “Virgin Islands Entities.” This Agreement is conditioned upon and subject to VIWMA adherence to the requirements found in Subrecipient Agreement SA-DR(WMA)-004-2020.

WHEREAS, a **SUBRECIPIENT AGREEMENT** was executed on February 25, 2021, between the VIHFA and VIWMA; and

WHEREAS the **SUBRECIPIENT AGREEMENT** outlines the respective roles and responsibilities of the Parties and the governing terms and conditions for funds allocated under the Community Development Block Grant Disaster Recovery Program (“CDBG-DR”); and

WHEREAS this **PROJECT AGREEMENT** (“Agreement”) provides detailed information on the project to be funded from the stated grant award specified within the Subrecipient Agreement; and

WHEREAS this Agreement is incorporated and integrated as Appendix “D” to the Subrecipient Agreement and is subject to all the terms and conditions contained therein within the Subrecipient Agreement; and

NOW THEREFORE, in consideration of the principles, assurances and promises contained within the Subrecipient Agreement and herein, the Parties mutually agree as follows:

SECTION 1: SCOPE OF SERVICES

Activity: Public Improvement under Section 105(a)(2) of the Housing and Community Development Act of 1974, as amended.

The proposed project is to develop the new **Concordia Convenience Center (“Convenience Center”)**. A Convenience Center is a consumer-oriented solid waste drop-off facility designed with measures to ensure waste is collected in an organized manner to prevent the hazards to public health, public safety, and the environment. The proposed project will have multiple collection areas, including bins, compactors, and sheds, to segregate the specific types of waste so that VIWMA will be able to implement a waste diversion program for the Territory including recycling, construction & demolition (C&D) waste, white goods, electronics, green waste, used oil, tires, and scrap metal. The proposed project will include a small office with break room facilities to allow the proposed project to be staffed with an attendant to ensure orderly disposal.

The proposed project will progress in four (4) stages, governed by four (4) **Notices to Proceed (NTP)** issued by VIHFA, only after certain specific requirements outlined in Section 2: Project Summary are satisfied. The environmental and 30% design services will be performed by VIWMA's in-house consultant. VIWMA will procure and contract for the remainder of design-build allowed in Notice to Proceed (NTP) 2 described below but cannot engage for work beyond the 30% design process without VIHFA's NTP 3 approval. Environmental reviews will also go through VIWMA's competitive procurement process and under the responsible charge of VIWMA's assigned project manager.

Project Service/Target Area is:

Concordia – West End Quarter, St. Croix USVI
Census Tract(s): 9709, 9710, 9711, 9712, 9713, 9714
Latitude: 17.70N Longitude: 64.87W

SECTION 2: PROJECT SUMMARY

The US Virgin Islands Waste Management infrastructure was severely damaged by Hurricanes Irma and Maria (hereinafter “the Hurricanes”). The Hurricanes generated 825,000 cubic yards of debris, which is almost three times as much waste as the Territory typically generates in one year.

The Hurricanes had clear social and economic impacts on VIWMA's existing Estate Concordia bin site which was physically overwhelmed with waste after the Hurricanes, creating a hazard to public health, public safety, and the environment. Residents who became impatient waiting on house-to-house collection of hurricane debris deposited not only bulk waste, municipal waste, and white goods, but also construction & demolition (C&D) waste at the existing Estate Concordia bin site. Waste overflowed the bins leaving the site heavily littered for over a month. At one point, the littered waste threatened to encroach upon the adjacent roadway.

The VIWMA needs infrastructure designed to address the influx of waste received after Hurricanes. This site is located within walking distance from many residences allowing it to be pedestrian accessible, which is important because roads are often dangerous to travel via motor vehicle after a hurricane knocks down utility poles, wires, and other hazardous debris. National flood hazard maps show that this site is not located in a flood plain. The existing Estate Concordia bin site currently receives waste at an average rate of 123 tons per week.

Design and Engineering for the proposed project must include:

- Completed conditions analysis, topographic survey, land/parcel survey and defined public right-of-way as needed
- Identification and issuance of all required permits
- Detailed schedule with project milestones
- Public meeting to inform the public and to receive and consider any comments
- Architecture and engineering plans (hereinafter “Plans”) each at the 30%, and final design stage

- Preparation of all environmental review documentation must be compliant with all applicable federal regulations and local statutes including the National Environmental Policy Act (NEPA), National Historic Preservation Act Section 106, and 24 CFR Part 58.

Final design and engineering may not begin until the following are complete:

1. environmental review process, based on the final scope of work;
2. the **Authority to Use Grant Funds (AUGF)** has been granted by the **U.S. Department of Housing and Urban Development (HUD)**; and
3. a Notice to Proceed has been issued to Waste Management by VIHFA.

A Notice to Proceed (NTP) will be issued at the following project progress stages:

Limited Notice to Proceed 1 (NTP-1):

VIWMA is authorized to complete the following:

1. use their in-house engineering firm to complete up to 30% of design and the environmental assessment
2. complete cost analysis
3. advertise Request for Proposal (hereinafter “RFP”) and receive bids for the design-build firm
4. VIWMA will be required to comply with 2 CFR pursuant to §200.324 Contract Cost and Price and provide the cost analysis to VIHFA for review and approval
5. VIWMA may not select a design-build firm or execute contract until the Authority to Use Grant Funds (AUGF) has been issued.

Notice to Proceed 2 (NTP-2):

Upon issuance of the AUGF, VIWMA is authorized to complete the following:

1. select the design-build firm.
2. Before a NTP-3 can be issued, the following must be submitted for VIHFA to review:
 - a. cost analysis
 - b. evaluation committee report
 - c. debarment clearance
 - d. draft contract for the selected design-build firm

Notice to Proceed 3 (NTP-3):

Upon approval of the cost analysis and draft contract, VIWMA is authorized to complete the following:

1. to enter into a contract with a design-build firm
2. to proceed with the 70% and 100% design
3. apply for and secure all required permits

Notice to Proceed 4 (NTP-4):

VIWMA is authorized to complete the following:

1. to begin construction activities after obtaining all permits required based on the proposed project design as submitted to and verified by VIHFA.

Program Schedule:

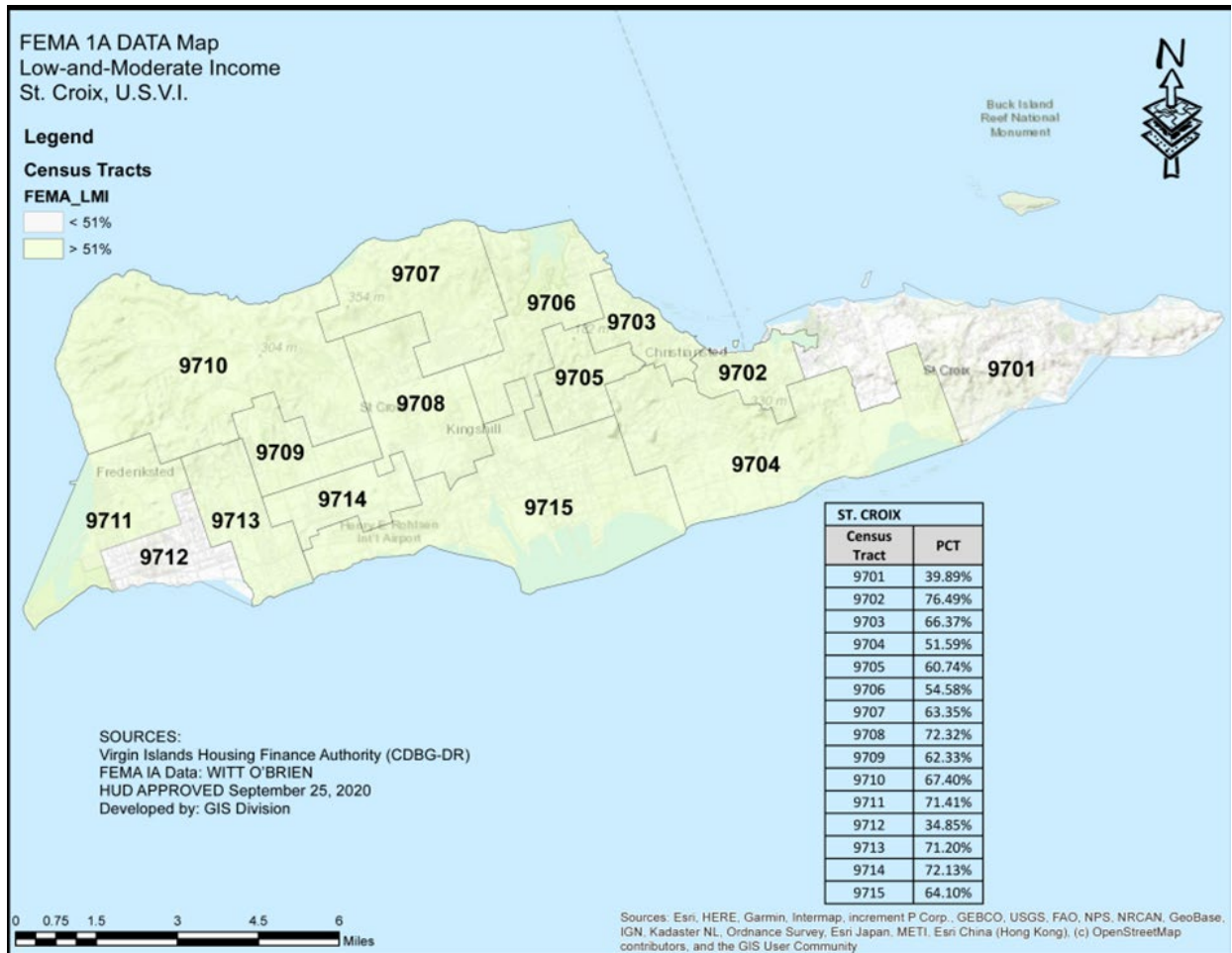
The timeline for the Convenience Center to be built is within 18 months from Authorization to Use Grant Funds and receipt of Notice to Proceed (NTP-4).

30-Oct-22	Begin 30% Design and Environmental Review
27-Jan-23	Complete 30% design
1-Feb-23	Advertise RFPs for design-build
3-Mar-23	Begin evaluation of bids and prepare cost analysis
3-Mar-23	Complete environmental
17-Apr-23	Receive Authority to Use Grant Funds
20-Apr-23	Submit cost analysis, evaluation committee report, debarment clearance and draft contract for the selected design-build firm to VIHFA for review
26-Apr-23	Execute contract with design build firm
17-June-23	Complete design and permitting
17-Mar-24	Complete construction
17-May-24	Close out

SECTION 3: NATIONAL OBJECTIVE

Benefit to Low- and Moderate-Income Area

(Concordia – West End Quarter, St. Croix, USVI
Census Tract(s): 9709, 9710, 9711, 9712, 9713, 9714
Latitude: 17.70N Longitude: 64.87W



SECTION 4: TERM OF AGREEMENT

The term of this Agreement is November, 2022, through May 31, 2024, but may be extended pursuant to a written amendment to this Agreement as authorized in Subrecipient Agreement SA-DR(WMA)-004-2020. Any amendment to the term of this Agreement must be written and signed by duly authorized representatives of the Parties. Unless this Agreement is terminated, its terms shall remain in effect until Close-Out as defined in Section 8.

SECTION 5: PROJECT BUDGET

Subject to the terms and conditions of this Agreement, VIHFA, as Grantee and administrator of the CDBG-DR Program, will make available to VIWMA disaster recovery funds up to the maximum amount of One Million, Six Hundred Ninety Two Thousand, Two Hundred Thirty-Three dollars and Seventy-Two cents (\$1,692,233.72) (the "Grant Funds") for the purpose of funding Repair and Resilience Program activities under the Action Plan, as amended from time to time, related to the stated Concordia Convenience Center project, once VIWMA has satisfied the terms and conditions of this Agreement and Subrecipient Agreement SA-DR(WMA)-004-2020. The Grant Funds must be expended by VIHFA within six years of the date that the funds are

obligated by the U.S. Department of Housing and Urban Development (HUD) to VIHFA, unless an extension is hereinafter granted in writing by HUD or as approved by VIHFA.

VIWMA is required to ensure all contracts with VIWMA contractors clearly stipulate the period of performance or the date of completion. As provided in SA-DR(WMA)-004-2020, Appendix F, VIWMA will provide to VIHFA a **Monthly Status Report (MSR)** on the fifteenth day of each month. A final project status report must be submitted when all activities are completed, all funds drawn, and monitoring report(s) cleared, prior to project closeout.

The total estimated Concordia Convenience Center Project Budget is \$1,692,233.72; the CDBG-DR Tranche 2 allocation is \$1,692,233.72, with any other sources of funding identified in Project Budget form, attached hereto as Exhibit 1. The funds allocated for VIWMA are intended for use only on design and implementation of Public Facilities and Improvements pursuant to 24 CFR § 1003.201(c).

Project Budget Summary:			
Category	CDBG-DR Budget	Other Sources	Totals
Project Cost (Direct)			
Sitework	\$543,437.60		\$543,437.60
Facilities	\$138,450.00		\$138,450.00
Fencing	\$168,565.00		\$168,565.00
Pavement	\$575,000.00		\$575,000.00
Design	\$59,421.90		\$59,421.90
Subtotal Project Cost (Direct)	\$1,425,452.60		\$1,425,452.60
Project Cost (Activity Delivery Cost)			
Environmental Assessment	\$26,662.00		\$26,662.00
Project Management	\$180,697.22		\$180,697.22
Subtotal Project Cost (Activity Delivery Cost)	\$266,781.12		\$266,781.12
TOTAL PROJECT COST	\$1,692,233.72		\$1,692,233.72

Though the budget line items in Exhibit 1 are estimates, the total budget for Tranche 1 as described in Section 1 Scope of Services of this project shall not exceed \$1,692,233.72 unless authorized in writing by the Grantee.

VIWMA further agrees that it shall not deviate from this budget except with prior written approval from the Grantee. If changes to the budget are requested VIWMA shall complete and submit a Project Budget form for the Grantee’s approval or denial.

- A. Time of Payment: Payment shall be made upon receipt of reimbursement voucher or payment request sent to VIHFA.
 - 1. VIWMA shall submit a reimbursement voucher or payment request within 75 days of the Notice to Proceed, (NOTE: If an extension is required, VIWMA shall immediately provide written notification and justification to VIHFA.)

2. VIWMA shall submit reimbursement vouchers or payment requests on a monthly basis, and
 3. VIWMA shall submit supporting documentation for each line item reflected on the reimbursement voucher or payment request submitted (as outlined below in SECTION 6: DOCUMENTATION OF PROJECT COSTS AND OTHER FINANCIAL REPORTING). Such supporting documentation should be a part of the reimbursement or payment request.
- B. Disbursement of Payment: The Grantee shall apply the funds under this Project Agreement in accordance with the Project Budget Summary and as reflected in the reimbursement request voucher(s) submitted by VIWMA.
1. An updated detailed line-item budget for all Agency internal or related costs must be submitted and approved by VIHFA prior to funds being released and drawn down.
 2. VIHFA will make payments directly to the environmental firm, Architecture/Engineering firm and/or Prime Contractors within 45 calendar days.
 3. Progress payments for work performed shall only be made after VIHFA reviews and approves the VIWMA's reimbursement voucher or payment request.
 4. VIHFA shall apply the funds under this Agreement in accordance with the Project Budget Summary and as reflected in the reimbursement payment request voucher(s) or payment request submitted by VIWMA.
- C. Budget Revisions: Any request for a line-item expense change shall be submitted in writing, shall specifically state the reasons for the requested increase and a justification for the corresponding decrease in other line-item(s). Any budget revisions must meet Cost Reasonableness standards. All budget revisions and/or amendment requests will be reviewed and approved or denied.

SECTION 6: DOCUMENTATION OF PROJECT COSTS AND OTHER FINANCIAL REPORTING

All payments shall be made as progress payments for work performed. All project costs must be supported with source documentation, including purchase orders, invoices, cancelled checks, evidence of electronic payments, etc. and submitted to VIHFA for review. For construction related draws, the contractor's draw request, along with an inspection report and verification of work in place conducted by VIWMA construction manager is required for payment. If appropriate, draws should be accompanied by lien releases.

Documentation of payment, or approved contractor's invoice for work in place must accompany all payment requests. VIHFA will pay the contractor directly after all the supporting documentation is submitted. If VIWMA is charging their staff time, certified timesheets must accompany the invoices.

SECTION 7: PERFORMANCE MEASURES / PROJECT MILESTONES

Conditions:

1. Insurance and Bonding

Agency shall require a Contractor to maintain liability insurance for protection against claims for damages because of bodily injury or death or claims for damages to property which may arise out of or result from the Contractor's operation under a contract whether such operation be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them. This amount shall be in the amount no less than the amount of the contract and the Contractor upon request shall present the Agency with a certification of such insurance.

A performance and payment bond on the part of the Contractor for 100 percent of the contract price shall be required. A performance bond is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract; a payment bond that will assure payment as required of all persons supplying labor and materials in the execution of the work provided for in the contract.

Design, engineering and environmental review activities do not require bonding.

2. Environmental Review

- a. At the completion of the Environmental Review, the Agreement will be amended to include the measures developed during the review. Preparation of all environmental review documentation must be compliant with all applicable federal regulations and local statutes including the National Environmental Policy Act (NEPA), National Historic Preservation Act Section 106, and 24 CFR Part 58.
- b. Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
- c. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize funding.
- d. If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archaeological resources are discovered, will immediately cease construction in that area and notify the VIHFA and State.

3. Subrecipient Agreement SA Special Conditions

VIWMA must be in compliance with all Special Conditions listed in Subrecipient Agreement SA-DR(WMA)-004-2020 (hereinafter "Special Conditions") and referenced below, including all applicable provisions of the Crosscutting Requirements and the HUD

General Provisions (“HUD Rider”), prior to the release of the Notices to Proceed (NTP) or release of CDBG-DR funds.

The VIWMA shall meet the required Special Conditions within thirty (30) days of the execution of this Agreement.

APPENDIX C - SPECIAL CONDITIONS GENERAL

VIHFA has determined specific risks associated with this grant and therefore has set forth additional grant terms and conditions for this subrecipient. These Special Conditions are attached to, and incorporated into, this Agreement. The Special Conditions may add, delete, or modify the overall Agreement. By signing the Agreement, the VIWMA agrees to these special conditions for the receipt of CDBG-DR funds, which may be amended from time to time. In the event of an inconsistency, these Special Conditions shall take precedence over the terms and conditions of this Agreement to the extent of that inconsistency.

2. AUTHORITY TO USE GRANT FUNDS (RELEASE OF FUNDS)

A. No costs shall be incurred/disbursed until after the VIWMA has received a written Notice to Proceed from VIHFA that the VIWMA (Agency) has satisfied the specific requirements listed herein for the release of CDBG-DR funds. The VIWMA may submit a request for Authority to Use CDBG-DR Funds for architectural and engineering activity prior to the release of other funded activities (if applicable).

B. The VIWMA shall meet the required Special Conditions within ninety (90) days, unless otherwise stated herein, after the execution of the Subrecipient Agreement.

C. The VIWMA shall submit to VIHFA a “Request for Authority to Use CDBG-DR Funds (Release of Funds)” and will be required to submit the following supporting documentation:

(1) Environmental Review: The Subrecipient shall not commit funds or begin work on any project with the intention of seeking reimbursement through VIHFA prior to the completion of environmental review requirements.

a. This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by [the participating jurisdiction, insular area or state recipient] of an approval of the request for release of funds and certification from the U.S. Department of Housing and Urban Development [or the state of] under 24 CFR Part 58. The provision of any funds to the project is conditioned on the [participating jurisdiction, insular area or state recipient’s] determination to proceed with, modify or cancel the project based on the results of the environmental review.

b. The Subrecipient must submit an annual Audit Certification form to VIHFA. The form will be provided by VIHFA.

c. The Subrecipient must attend and participate in a mandatory HUD OIG training provided by HUD’s Office of the Inspector General prior to the receipt and expenditure of funds.

(2) Other Special conditions in accordance with CDBG-DR are as follows:

- a. Under the CDBG-DR regulations, VIHFA is responsible for ensuring that CDBG-DR funds are used in accordance with all program requirements and projects are eligible for CDBG-DR funding. To meet eligibility, each project must meet the following: (1) Be a CDBG-eligible activity (or be eligible under a waiver or alternative requirement under 83 FR 5844 or 83 FR 40314); (2) meet a national objective; and (3) address a direct or indirect impact from the major disaster in a Presidentially declared county. Each project will have to undergo an eligibility determination and receive confirmation of eligibility prior to the receipt of funds.
- b. The Subrecipient shall not receive any funding without the completion of the CDBG-DR Application and providing all supporting documentation to VIHFA. This includes all standalone CDBG-DR funded projects, as well as projects seeking non-Federal share match funding. The Subrecipient shall complete an Amended Application, if there is a change to a project that requires reallocation of budgeted funds or an addition of funds.
- c. The Subrecipient shall provide an updated organizational chart reflecting any vacant positions and the titles of those positions to the VIHFA prior to any funding disbursement/reimbursement being paid to the Subrecipient. The Subrecipient shall also provide a timeline for filling those positions, particularly those relating to the management of federal grants.
- d. Prior to any funding disbursement/reimbursement of funds being paid to the Subrecipient; the Subrecipient shall provide a letter to VIHFA explaining any plans to augment existing staff to assist in the administration of CDBG-DR grants.
- e. The Subrecipient shall provide a copy of its procurement policy.
- f. The Subrecipient shall develop and provide (to VIHFA) a procurement checklist based on the Subrecipient's procurement policy and procedures.
- g. The Subrecipient must notify VIHFA of all procurement events and share all procurement documents (including draft contract) for review to ensure compliance with CDBG-DR funded requirements prior to the start of its procurement process.
- h. All procurements issued and contracts executed shall include the federal cross-cutting measures that are applicable to the CDBG-DR program.
- i. Prior to any funding disbursement/reimbursement of funds being paid to the Subrecipient; the Subrecipient shall provide a draft or final copy of the following policies: (i) Fraud, Waste and Abuse; (ii) Record Retention; (iii) Financial/Accounting; and (iv) Grants Management.
- j. The Subrecipient shall provide the final internal and single audit reports and/or report schedule for FY 2017, 2018 and 2019.
- k. The Subrecipient shall provide a plan detailing additional efforts taken since the Landfill Status Report of June 2020. In this plan, VIWMA must also provide the next steps towards fulfilling the requirements of the consent decrees (3:10-cv-00048-CVG-RM) for the Bovoni (Environmental Enforcement - #2176836 - v1- CD_Bovoni_FINAL) and Anguilla (Environmental Enforcement - #2322058 - v1- CD_Anguilla_FINAL) Landfills.
- l. The Subrecipient shall provide an update on compliance with the Resource Conservation and Recovery Act as referenced in Section VII. RCRA COMPLIANCE REQUIREMENTS, specifically paragraphs 21-24.
- m. The Subrecipient shall provide an update on compliance with Section XIII FINANCING (Bovoni) and Section XIV FINANCING (Anguilla) (of the Consent

Decrees) to support the operations and long-term maintenance of the solid waste system in the Territory. VIWMA must include timelines in the requested plan.

n. The Subrecipient shall provide an update on compliance with US Virgin Islands Code Title 29 – Public Planning and Development Chapter 8 – Virgin Islands Waste Management Authority, subchapters 496(i)(1), 500b(a) and 498(a)(7).

o. As a recipient of CDBG-DR funds, the Subrecipient shall provide annual updates on the status of the consent decrees to VIHFA and the public beginning the first year following execution of the Subrecipient Agreement.

Milestones:

1. Complete 30% design and environmental
2. Solicit vendor for design build firm
3. AUGF approved
4. Select vendor for design build firm
5. Execute contract for design build firm
6. Complete 100% design
7. Submit all required permits
8. Begin construction
9. Submit periodic narrative reports
10. Complete construction
11. Closeout

SECTION 8: CLOSE-OUT

VIWMA obligations under this Agreement shall not end until all close-out requirements as set forth in 24 CFR 570.509 are completed. The terms of this Agreement shall remain in effect until the project has been closed out.

VIWMA shall submit within thirty (30) days after the date of expiration of this Agreement, all financial, performance and other reports required by this Agreement and Subrecipient Agreement SA-DR-(WMA)-004-2020, and in addition, will cooperate in any project audit.

Closeout of funds will not occur unless all requirements of 24 CFR 92.507 and any outstanding issues with a contractor / vendor and or subcontractor have been resolved to the satisfaction of VIHFA, and/or HUD.

SECTION 9: NOTICES

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

To the HFA:

Dayna Clendinen
Interim Executive Director
Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200
St. Thomas, VI 00802
Email: dclendinen@vihfa.gov
Telephone: (340) 777-4432
Fax: (340) 775-7913

To AGENCY:


Roger E. Merritt Jr.
Executive Director
3200 Demarara
St. Thomas, VI 00802
Email: rmerritt@viwma.org
Telephone: (340) 712-4962

SECTION 10: INTEGRATED DOCUMENT


This Agreement, along with Subrecipient Agreement SA-DR(WMA)-004-2020 and any attachments, constitutes the entire agreement between the parties and both parties acknowledge that there are no other agreements, written or oral, that have not been fully set forth in the text of this Agreement.

SECTION 11: 8 SEVERABILITY

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

Reviewed for Legal Sufficiency:

Karabo Molyneux-Molloy, Esq.
Dated: 28 day of October, 2022

WITNESSES:

Alice Krall 10/28/22


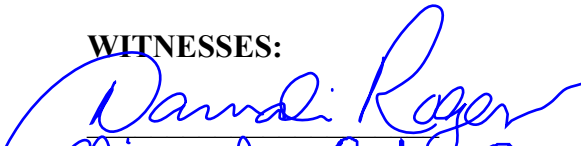

**VIRGIN ISLANDS WASTE MANAGEMENT
AUTHORITY:**

BY: Roger E. Merritt, Jr.

DATE: 10/28/22

Roger E. Merritt, Jr.
Executive Director

WITNESSES:

**VIRGIN ISLANDS HOUSING FINANCE
AUTHORITY:**

BY: 

DATE: November 2, 2022

Dayna Clendinen
Interim Executive Director /
Chief Disaster Recovery Officer