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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE VIRGIN ISLANDS DEPARTMENT OF HEALTH
&
THE FEDERAL EMERGENCY MANAGEMENT AGENCY
DEPARTMENT OF HOMELAND SECURITY
THROUGH
THE VIRGIN ISLANDS DEPARTMENT OF PROPERTY AND PROCUREMENT**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this 27 day of 2021, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands Department of Health and Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS), each a "Party" or collectively "Parties," through the Department of Property and Procurement.

WITNESSETH:

Whereas, the Virgin Islands Department of Health (VIDOH) is responsible for ensuring the health of the public due to the COVID-19 Pandemic pursuant to Title 3, Chapter 23 and Title 19, Chapter 1, Part 1, of the Virgin Islands Code; and

Whereas, the Federal Emergency Management Agency Region II is responsible to help people before, during, and after disasters, within New Jersey, New York, Puerto Rico and the U.S. Virgin Islands. In support of its mission, FEMA Region II may deploy Federal personnel in a surge to a discrete area of operations in response to all-hazards; and

Whereas, this Agreement is authorized under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207, FEMA-DR-4513-VI, et seq; and

Whereas, MOU G018DOHT21 effective January 27, 2021, and shall expire July 26, 2021; and

Whereas, This MOU extends the terms and obligations under the previously executed MOU G018DOHT21 signed on January 27, 2021 with minimum changes; and

Whereas, the agencies desire to continue to combine efforts to combat the spread of COVID-19 by coordinating efforts with the vaccination program; and

Whereas, the agencies desire to continue to combine efforts to combat the spread of COVID-19 and ensuring mass vaccination, by entering into this MOU.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and

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intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. TERM AND EFFECTIVE DATE

This MOU shall be effective upon the date of execution and shall be effective until terminated in writing with fifteen (15) days' notice, or until December 31, 2021, whichever is earlier.

2. COSTS

There shall be no exchange of funds between the Parties for the performance of tasks under this MOU. Each Party shall bear all costs associated with the fulfillment of its responsibilities under this MOU.

3. RESPONSIBILITIES/ TASKS

3.1 Department of Health shall be responsible for:

- (a) VIDOH may continue to utilize the Premises (as defined below at Section 3.2(a)) as a site for mass vaccinations.
- (b) Limit its use of the Premises to the purpose at Section 3.1 (a) and during the days and times determined by the parties on a weekly basis.
- (c) At no cost to FEMA, maintain the Premises in good repair and condition, and promptly advise FEMA and make arrangements to repair any damage caused to the property including to heat, air conditioning, light, or ventilation systems;
- (d) Maintain the Premises in clean and orderly condition;
- (e) Surrender the Premises in the same state and condition as it was in at the commencement of use and occupancy;
- (f) Provide for any required security or cleaning services;
- (g) Continue to maintain insurance for liability, and for loss of or damage to the property, arising from the wrongful or negligent acts or omissions of VIDOH employees and contractors in accordance with V.I.C. Title 33, Chapter 118, Sections 3401 through 3417;
- (h) Continue to inoculate Federal Emergency Response Officials when provided under VIDOH policy; and
- (i) Not obstruct FEMA's access to the Premises; specifically in times of emergency during disasters, up to and including hurricanes.



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- (j) VIDOH acknowledges, that in the case of an emergency or if an impending incident arises, such as (but not limited to), hurricane, tropical storm, weather system, fire, power outage, explosion, flood, or other similar activity, FEMA may terminate the MOU or hold the terms of the MOU in abeyance in order to use the Premises to respond to such emergency or incident; further described in #9 below.

3.2 Federal Emergency Management Agency Region II shall be responsible for:

- (a) FEMA is leasing the Nissan Dealership, La Grande Princess, Christiansted, St. Croix, USVI 00820 ("Premises"). The Premises are being utilized by FEMA.
- (b) FEMA agrees to permit VIDOH's continued non-exclusive use of the Premises as a site for distribution of Covid-19 vaccinations.
- (c) FEMA authorizes VIDOH the use of the specific areas identified as a site for mass vaccinations.
- (d) FEMA shall abide by the conditions of Section 3.1 (a).
- (e) Additionally, FEMA shall ensure VIDOH has access to the Premises; except in times of emergency during disasters, up to and including hurricanes.

3.3 Other Provisions

- a) **Liability.** To the extent allowed by law, VIDOH agrees to be responsible for the negligent or wrongful acts or omissions of its employees, agents, invitees, independent contractors, successors or assigns arising under this MOU, the Govt's liability exposure is limited by the Virgin Islands Tort Claims Act (33 VIC Sections 3410-3417). VIDOH acknowledges it is responsible for any accidents that occur on the Premises during its occupancy, including during its delivery of the vaccine to patients. The parties agree—subject to any limitations imposed by law, rule, or regulation—to cooperate in good faith to resolve any claims promptly and, whenever appropriate, without litigation. For all claims or suits arising under this MOU, each party's designated legal representatives will, within (7) calendar days of receipt, provide each other's designated legal representatives copies of any documents memorializing such claims. Nothing in this MOU shall be construed as a waiver of any sovereign immunity of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b), 2671-2680 provides the exclusive monetary damages remedy for allegedly wrongful or negligent acts or omissions by federal employees within the scope of their employment.
- b) **Compliance with Applicable Law:** VIDOH, as set forth above, shall comply with all Federal, State and local laws applicable to this MOU including, without limitation, laws applicable to operation pursuant to this MOU and each party will obtain and maintain all required permits, licenses and similar items, at no cost to FEMA. United States law will be applied to resolve any dispute or claim.



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- c) **Proper Use of Premises.** Nothing in this MOU shall be construed to create a duty on FEMA to inspect for toxic material or latent environmental conditions present on the Premises or which could be affected by VIDOH's intended use of the Premises. VIDOH shall be responsible for any toxic material or latent environmental conditions introduced to the Premises as a result of use. There are no known environmental conditions which could affect VIDOH's use of the Premises, known to FEMA.

4. DESIGNATED REPRESENTATIVE

Each Party shall designate a representative to oversee its responsibilities under this MOU.

Department of Health designates:

Justa E. Encarnacion, RN, BSN, MBA/HCM
Commissioner
Department of Health
3500 Estate Richmond
Christiansted, St. Croix VI 00820

FEMA Region II designates:

Mark A. Walters
FCO/Disaster Recovery Manager
Federal Emergency Management Agency
Department of Homeland Security
(202) 267-5320
Email: mark.walters@fema.dhs.gov

Kristen A. Hodge
Recovery Director/Disaster Recovery Manager
Federal Emergency Management Agency
Department of Homeland Security
(202) 626-6467
Email: kristen.hodge@fema.dhs.gov

5. ASSIGNMENT

Neither Party shall subcontract or assign any part of the services or responsibilities under this MOU.

6. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this MOU 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



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instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this MOU, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

7. ENTIRE AGREEMENT

This MOU constitutes the entire agreement of the parties relating to the subject matter addressed in this MOU. This MOU extends the terms of MOU # G018DOHT21, but supersedes all other prior communications, MOUs, or agreements between the parties with respect to the subject matter addressed in this MOU, whether written or oral.

8. CONDITION PRECEDENT

This MOU shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

9. TERMINATION AND ABEYANCE

Either party will have the right to terminate this MOU with or without cause on fifteen (15) days written notice to the other party specifying the date of termination.

If an emergency or impending incident arises, such as (but not limited to), hurricane, tropical storm, weather system, fire, power outage, explosion, flood, or other similar activity, FEMA may terminate the MOU or hold the terms of the MOU in abeyance in order to use the Premises to respond to such emergency or incident. Once and if the emergency or incident has subsided or been rectified, the terms of the MOU shall apply again and VIDOH may use the Premises in accordance with part 3.

10. 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 MOU on account of race, creed, color, sex, religion, disability or national origin. The use of Federal facilities, supplies and services undertaken under this MOU will be in compliance with regulations promulgated by FEMA under the Stafford Act guaranteeing non-discrimination and prohibiting duplication of benefits. (See 44 C.F.R. §§ 206.11 and 206.191.).

11. CONFLICT OF INTEREST

Both Parties covenant 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 be performed under this MOU.



12. NOTICE

Any notice required to be given by the Terms of this MOU shall be deemed to have been given when the same is sent by electronic mail or certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

Anthony D. Thomas, MBA
Commissioner
Department of Property and Procurement
8201 Subbase, Suite 4
St. Thomas Virgin Islands 00802
Email: anthony.thomas@dpp.vi.gov

Justa E. Encarnacion, RN, BSN, MBA/HCM
Commissioner
Department of Health
3500 Estate Richmond
Christiansted, St. Croix VI 00820
Email: justa.encarnacion@doh.vi.gov

Mark A. Walters
FCO/Disaster Recovery Manager
Federal Emergency Management Agency
Department of Homeland Security
(202) 267-5320
Email: mark.walters@fema.dhs.gov

Kristen A. Hodge
Recovery Director/Disaster Recovery Manager
Federal Emergency Management Agency
Department of Homeland Security
(202) 626-6467
Email: kristen.hodge@fema.dhs.gov

17. FASCIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.



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IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES

GOVERNMENT OF THE VIRGIN ISLANDS

Deese A Dunlop-Hasley

Justa E. Encarnacion
Justa E. Encarnacion, Commissioner
Department of Health

7/4/2021

Date

Reginald A. Thomas

Anthony D. Thomas
Anthony D. Thomas, Commissioner
Department of Property and Procurement

27 2021

Date

WITNESS

FEDERAL EMERGENCY MANAGEMENT AGENCY REGION II

[Signature]

Mark A. Walters

Mark A. Walters, FCO /
Disaster Recovery Manager
FEMA / DHS

7/2/2021

Date

[Signature]

Kristen A. Hodge

Kristen A. Hodge, Recovery Director/
Disaster Recovery Manager
FEMA / DHS

7/2/2021

Date

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: Carol E. McDermott Date 7/26/2021
Assistant Attorney General

MOU No. G044DOHT21

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Initials: [Signature]