



## **Department of Property & Procurement**

Government of the United States Virgin Islands

3274 ESTATE RICHMOND, CHRISTIANSTED, U. S. VIRGIN ISLANDS 00820

8201 SUB BASE, 3RD FLOOR, ST. THOMAS, U. S. VIRGIN ISLANDS 00802

ST. CROIX MAIN OFFICE: 340.773.1561 | ST. THOMAS MAIN OFFICE: 340.774.0828

ST. CROIX FAX: 340.773.0986 | ST. THOMAS FAX: 340.777.9587

[HTTP://DPP.VI.GOV](http://DPP.VI.GOV)



**November 16, 2021**

**Amendment 4- RFP-054-T-2021 (P) Swann Correctional Annex Design  
Build, Finance, and Maintenance on St. Thomas, USVI**

**Delete Due Date: Friday, November 19, 2021 @ 4:30 PM, AST**

**Insert Due Date: Friday, December 26, 2021 @ 4:30 PM, AST**

**Insert : See Attached – USVI PPP Agreement Template**

**ALL OTHERS TERMS AND CONDITIONS REMAIN UNCHANGED.**

**BIDDERS MUST ACKNOWLEDGE RECEIPT OF THIS AMENDMENT WITH  
THEIR BID PROPOSAL**

**PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

**BETWEEN**

**XXX**

**And**

**BUREAU OF CORRECTIONS  
GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES**

**Project:**

Design, Build, Finance and Maintenance  
Alva A. Swann Correctional Annex (the “Annex”)

\_\_\_\_\_, 2022

**PUBLIC-PRIVATE PARTNERSHIP AGREEMENT  
BETWEEN  
XXX  
And  
BUREAU OF CORRECTIONS  
GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES**

This is a Public-Private Partnership Agreement ("Project Agreement", "Agreement"), made and entered into as of \_\_\_\_\_, 2022 (the "Effective Date") by and between XXX, a \_\_\_\_\_ company ("XXX", "Contractor") and BUREAU OF CORRECTIONS, GOVERNMENT OF THE VIRGIN ISLANDS ("USVI", "BOC") or the "Government").

**WITNESSETH:**

**WHEREAS**, the Government is in need of the services of a Contractor to design, build, finance, and maintain the new Alva A. Swann Correctional Annex on St. Thomas, which duties and responsibilities are more particularly described in Addendum I (Scope of Work), attached hereto; and

**WHEREAS**, the Government solicited the services under RFP No. 054-T-2021 (P); and

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

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

**ARTICLE 1 - DEFINITIONS**

In addition to the defined terms set forth above, whenever the following terms, or pronouns in place of them, appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

1.1 Architect: the architectural firm who shall be retained by Construction Agent with respect to the Project.

1.2 Construction Agent: XXX or its designee, which shall serve as construction agent for the Project and for the construction of the Work.

1.3 Consultant: the engineering firm and/or 3<sup>rd</sup> party construction management firm who shall be retained by Construction Agent to provide professional services for this Project.

1.4 Contract Documents: This Agreement and its exhibits, attachments and forms, Plans and Specifications, approved Shop Drawings and submittals, the Request For Proposals and Contractor's response thereto (as negotiated and accepted by the Construction Agent), any

Addenda to the Contract Documents, the Notice of Award, the Notice(s) to Proceed, and all Amendments, and Change Orders issued after execution of this Agreement are the documents which are collectively referred to as the Contract Documents.

1.5 Contractor: The person, firm, or corporation with whom Construction Agent, on behalf of USVI, shall contract under a Design Build Construction Agreement and who is responsible for the acceptable performance of the Work and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.

1.6 Effective Date. The effective date of this Agreement shall be the date that the last of Construction Agent and USVI execute this Agreement.

1.7 Final Completion: The date, as certified in writing by the Contractor and Construction Agent and as finally determined by the USVI's designee in his or her reasonable discretion, upon which: (i) all conditions and requirements of the Contract Documents, permits and regulatory agencies have been satisfied with respect to the Work; (ii) any and all documents required by the Contract Documents have been received by USVI and Construction Agent; (iii) all required inspection and testing of the Work has been successfully passed; (iv) a certificate that, to the best of the Architect's and Construction Agent's knowledge, information and belief, all Work required for the Project has been fully completed in all material respects in accordance with the terms and conditions of the Contract Documents and it has passed all inspections, testing and commissioning by regulatory agencies (including CBP); and (v) all equipment and system manuals and guides, and all required warranties, have been turned over to Construction Agent. A Final Certificate of Completion or Occupancy or other permit closures by the authority having jurisdiction must be issued for Final Completion to be achieved.

1.8 Notice to Proceed: One or more written notices to Contractor from the Construction Agent authorizing the commencement of Work or a phase of the Work.

1.9 Plans and Specifications: shall mean the plans and specifications prepared by the Architect for the Project.

1.10 Project: The construction project which consists of the construction of a correctional facility as the Alva Swann Annex as set forth in the Plans and Specifications approved by the USVI, as more particularly described in Addendum III- Bridging Documents for USVI BOC Swann Annex attached hereto.

1.11 Project Manager: the project manager retained by Construction Agent and which shall have day-to-day administrative and managerial responsibility for the Project.

1.12 Shop Drawings: Drawings prepared by, and approved by, the Architect of a portion of the Project for use by the Contractor in connection with the construction of the Project.

1.13 Subcontractor: A person, firm, or corporation having a contract with Contractor to perform services on the Project.

1.14 Substantial Completion: The date, as certified in writing by the Contractor and the Architect, and as finally determined by Construction Agent and U S V I (which may act through its designee) in their respective reasonable discretion, that the Work is at a level of completion in substantial compliance with the Contract Documents and permits, such that the Work has passed inspection and testing by the applicable Governmental Authorities, to receive and house inmates from the USVI Bureau of Corrections.

1.15 Surety: In the event XXX obtains a payment and performance bond for the Project, then, the surety company or individual which is bound by the performance bond and payment bond with and for Contractor who is primarily liable, and which surety company or individual is responsible for Contractor's acceptable and timely performance and completion of the Work under this Agreement and for the payment of all debts pertaining thereto in accordance with applicable US Virgin Island law.

1.16 Work: The totality of the obligations, including, but not limited to, preconstruction services, demolition administration, procurement, materials, equipment, labor, construction, and other services necessary for Contractor, or its agents, to fulfill Contractor's obligations under the Design Build Construction Contract and this Agreement.

## **ARTICLE 2 - TERM AND EFFECTIVE DATE**

This Contract shall be effective upon the date of execution of this Contract by the Governor of the U.S. Virgin Islands. The term of the contract consists of a financing period of up to three months following the effective date of the contract, a design and construction period of approximately Twenty- Nine (29) months, and Twenty (20) years of operation from the date of Substantial Completion.

## **ARTICLE 3 - SERVICES**

The Contractor will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract.

## **ARTICLE 4 - CONTRACTOR'S RESPONSIBILITIES**

4.1 Contractor shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until Final Completion, and shall promptly repair any damage done from any cause whatsoever.

4.2 Contractor shall be responsible for all materials, equipment, and supplies pertaining to the Project. In the event any such materials, equipment, and supplies are lost, stolen, damaged, or destroyed prior to Final Completion, Contractor shall replace same without cost to the USVI. Contractor shall be responsible to protect all materials, equipment, and supplies, keeping them free from deterioration, weathering, rusting, or other action detrimental to the materials.

4.3 Construction Agent reserves the right to award other contracts, or perform work with its own forces, in connection with this Project. Contractor shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of services under such separate contracts. Contractor shall properly connect and coordinate its Work with the services of any other persons or contractors.

4.4 If any part of Contractor's Work depends for proper execution or results upon the services of any other person or contractor, Contractor shall inspect and promptly report to Construction Agent any defects in such services that render it unsuitable for such proper execution and results. Contractor's failure to so inspect and report shall constitute an acceptance of the other person's or contractor's services as fit and proper for the reception of Contractor's Work, except as to defects which may develop in other person's contractor's services after the execution of Contractor's Work.

4.5 Contractor shall conduct its operations and take all reasonable steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor or Construction Agent or USVI operations on the Project site. Should such interference or impact occur, and Contractor did not take reasonable steps, Contractor shall be liable for the cost of such interference or impact.

4.6 Contractor shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing, and equipping of the improvements.

4.7 Contractor shall plan, record, and update, at least monthly through Final Completion, the construction schedule of the Project. The Project Schedule shall indicate the dates for the commencement and completion of the various stages of construction and shall be revised as required by the conditions of the Work. The Project Schedule shall encompass all of the Work of all trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored through the end of the warranty phase of the Project. The Project Schedule shall incorporate sufficient time for important milestone events and required coordination points as may have been established in the Project's Preconstruction Services phase.

4.8 Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures employed in the performance of the Work.

4.9 Contractor when applicable, will present documented precise records of time and/or money expended under this Contract.

4.10 Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

## **ARTICLE 5 – COMPENSATION**

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor a sum not to exceed

\_\_\_\_\_ in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.

## **ARTICLE 6 - PRECONSTRUCTION SERVICES**

6.1 Contractor shall provide all Preconstruction Services which are set forth in Addendum I- Scope of Services and all other necessary, incidental, and related activities and services required by Preconstruction Services and contemplated in Contractor's level of effort.

6.2 The Preconstruction Services do not delineate every detail and minor work task required to be performed by Contractor to complete the Project. If, during the course of the performance of the services included in this Agreement, Contractor determines that work should be performed to complete the Project which in Contractor's opinion, is outside the level of effort originally anticipated, whether or not Preconstruction Services identify the work items, Contractor shall notify Construction Agent in writing in a timely manner before proceeding with the work. If Contractor proceeds with said work without notifying Construction Agent, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in Preconstruction Services. Notice to Construction Agent does not constitute authorization or approval by Construction Agent to perform the work. Performance of work by Contractor outside the originally anticipated level of effort without prior written approval by the Construction Agent is at Contractor's sole risk.

## **ARTICLE 7 – NOTICE TO PROCEED; SUBSTANTIAL COMPLETION**

7.1 Contractor shall be directed in writing to commence the Work, or a portion thereof, in the form of a Notice(s) to Proceed issued by Construction Agent. The Notice(s) to Proceed will not be issued until after Contractor's submission to Construction Agent of all required documents and after execution of the Agreement by both Parties.

7.2 Notice(s) to Proceed:

7.2.1 Construction Agent shall have the authority to issue multiple Notice(s) to Proceed for the Work, or portions thereof. The work identified within a Notice to Proceed shall be commenced within ten (10) calendar days after the effective date set forth in a Notice to Proceed.

7.2.2 Prior to the issuance of a Notice to Proceed for construction of the Work, or a portion thereof (sub Phase), Contractor shall submit to Construction Agent and Consultant for approval all of the following items:

7.2.2.1 A Project Schedule in compliance with the terms of this agreement. Additionally, at the request of Construction Agent, Contractor shall also provide a cost loaded schedule for review and approval.

7.2.2.2 Contractor shall meet with all utility owners and secure from them a utility coordination schedule of each utility relocation.

7.2.2.3 All permits required by authorities having jurisdiction for all applicable portions of the Work, unless otherwise provided by the Contract Documents.

7.2.3 Preconstruction Meeting: After receipt of all items identified above, Project Manager shall schedule a Preconstruction Meeting to discuss procedures for conducting the Work, including but not limited to: designating individuals to receive communications for required submissions, inspections and approvals; procedures for processing Applications for Payment; and to establish a working understanding among the Parties as to the Work.

7.2.4 Notice to Proceed for Construction: After the Preconstruction Meeting, Contractor may begin to perform the balance of the Work on the Project Initiation Date specified in the Notice to Proceed for construction of the Work.

7.3 Substantial Completion Date: When Contractor considers that the Work, or portion thereof designated by the Construction Agent, has reached Substantial Completion, Contractor shall notify Construction Agent, Project Manager, USVI's designee and the Architect in writing, including a comprehensive list of items to be completed or corrected by Contractor. Architect shall then promptly make a preliminary inspection of the Work. When the Architect, on the basis of the preliminary inspection, determines that the Work, or designated portion thereof, is substantially complete, Architect will notify Construction Agent, the Project Manager, the Consultant and USVI's designee. Construction Agent shall then, with Architect, the Project Manager, the Consultant and Contractor, perform Construction Agent's Substantial Completion Inspection. If Substantial Completion of the Work, or a portion thereof, has been achieved, Architect shall prepare a Certificate of Substantial Completion for execution by the Construction Agent and the Contractor and approval by USVI (or its designee). The Certificate of Substantial Completion shall include: 1) the Date of Substantial Completion; 2) the responsibilities of USVI and Contractor for security, maintenance, utilities, damage to the Work, and insurance; and 3) a Substantial Completion Punch List, including submittals, to satisfy the requirements for Final Completion.

7.4 Use of Completed Portions: USVI shall have the right to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents. In the event USVI takes possession of any completed or partially completed portions of the Project, the following shall occur:

7.4.1 USVI shall give notice to Contractor in writing at least thirty (30) calendar days prior to USVI's intended occupancy of a designated area.

7.4.2 Contractor shall complete the designated area to the point of Substantial Completion and request inspection and issuance of a Certificate of Substantial Completion.



7.4.3 Upon the Architect's issuance of a Certificate of Substantial Completion, the applicable warranty(ies) shall commence and USVI will assume full responsibility for maintenance, utilities, subsequent damages by USVI and the public, and adjustment of insurance coverages for the occupied area unless otherwise agreed in writing.

7.4.4 Contractor shall complete all items noted on the Substantial Completion Punch List and request final inspection and final acceptance of the portion of the Work occupied.

7.4.5 If USVI finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by USVI, Construction Agent and Contractor. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Contractor to such occupancy or use shall not be unreasonably withheld.

### **ARTICLE 8 - INDEPENDENT CONTRACTOR**

In performing its obligations hereunder, Contractor shall be deemed an independent contractor and not an agent or employee of the Construction Agent. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Agreement, unless the Contract Documents give other specific instructions concerning these matters.

### **ARTICLE 9 - MISCELLANEOUS**

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

#### **GOVERNMENT**

Anthony D. Thomas Commissioner  
Department of Property and Procurement  
8201 Sub Base, Suite 4  
St. Thomas Virgin Islands 00802

Wynnie Testamark, Director  
Bureau of Corrections  
RR1 Box 9909  
Kingshill, VI 00850

#### **CONTRACTOR**

[NAME] [TITLE]  
[NAME OF COMPANY]  
[PHYSICAL ADDRESS]  
[MAILING ADDRESS]  
[CITY, STATE, ZIP CODE]

## 9.2 Hurricane And Disaster Preparedness

9.2.1 Pre-Hurricane and Disaster Provisions: During such periods of time as are designated by the United States Weather Bureau as being a hurricane warning or alert, USVI shall instruct Contractor, except as specified below, to take all reasonable precautions necessary to secure the Project site in response to all threatened storm events, regardless of whether the Construction Agent or Consultant has given notice of same. Compliance with any specific hurricane warning or alert precautions will not constitute additional work.

9.2.2 Post-Hurricane and Disaster Provisions: USVI may issue enabling documents to mobilize Contractor and its Subcontractors in the aftermath of a hurricane, natural disaster or other emergency for the purposes of damage assessment and providing temporary and permanent repairs to USVI facilities (or other facilities as may be assigned by USVI). In the immediate aftermath of a storm, natural disaster or other emergency, XXX and USVI shall establish communications to determine an assessment and recovery plan and to establish a preliminary list of emergency recovery activities that Contractor shall undertake.

9.3 Third Party Beneficiaries: Neither XXX nor USVI intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

9.4 Joint Preparation: Preparation of this Agreement has been a joint effort of XXX and USVI and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

9.5 Waiver: No consent or waiver, express or implied, by either Party to this Agreement to or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such Party hereunder, nor deemed to be a modification of this Agreement. Failure on the part of any Party hereto to complain of any act or failure to act of the other Party or to declare the other Party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such Party hereunder, provided however this section shall not alter or amend the notice provisions set forth in the Agreement.

9.6 Entire Agreement; Severability; Amendments; Recitals: This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly, the Parties agree that no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document signed by

the Parties hereto. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective. Each of the Recitals is true and correct and each Recital is hereby incorporated into this Agreement for all purposes.

9.7 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.8 Governing Law, Venue, and Waiver of Jury Trial: **THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE UNITED STATES AND THE UNITED STATES VIRGIN ISLANDS. ANY CONTROVERSIES OR LEGAL PROBLEMS ARISING OUT OF THIS AGREEMENT AND ANY ACTION INVOLVING THE ENFORCEMENT OR INTERPRETATION OF ANY RIGHTS HEREUNDER SHALL BE SUBMITTED EXCLUSIVELY TO THE JURISDICTION OF THE UNITED STATES FEDERAL COURTS LOCATED IN THE UNITED STATES VIRGIN ISLANDS. BY ENTERING INTO THIS AGREEMENT, USVI AND XXX HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE PROJECT.**

9.10 Interpretation: The language of this Agreement has been agreed to by both Parties to express their mutual intent and no rule of strict construction shall be applied against either Party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

9.11 Representation of Authority: Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full and legal authority.

9.12 No Partnership or Joint Venture. This Agreement shall not constitute or make the Parties a partnership or joint venture or create any other joint relationship.

9.13 Amendments. No modification, amendment, addendum, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared and executed with the same formality as this Agreement by the Construction Agent and USVI.

9.14 Legal Fees and Expenses. Should any of the parties hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys' fees and all court costs in connection with said proceeding.

9.15 No Liability. Nothing in this Agreement shall be construed to impose any liability upon the USVI to persons, firms, associations, or corporations engaged by XXX as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of XXX of whatsoever nature, including but not limited to unemployment insurance and social security taxes for XXX, its servants, agents or independent contractors.

9.16 No Discrimination. No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Agreement on account of race, creed, color, sex, religion, disability or national origin.

9.17 No Conflict of Interest. XXX 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 be performed under this Agreement. XXX further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

- (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
- (ii) not made, negotiated or influenced this Agreement, in its official capacity;
- (iii) no financial interest in the Agreement as that term is defined in section 1101(1) of said Code chapter.

9.18 Licenses and Permits. XXX covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code;
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands

Code pertaining to professions and occupations; and

- (c) Contractor agrees that pursuant to 31 V.I.C 236(h) it will hire at least two individuals from the Welfare to Work program administered by the Labor and Human Services Departments.

9.19 Eligibility and Debarment Certification. By execution of this Agreement, XXX certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. XXX shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current “LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT”. In the event XXX or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, XXX or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the XXX or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

9.20 No False Claims. XXX warrants that it shall not, with respect to this Agreement, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. XXX acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

9.21 Anti-Bribery and Non-Solicitation. XXX represents, warrants and agrees to USVI that it: (a) will comply with all anti-corruption laws applicable to its business operations; (b) has not and will not offer, promise, give or authorize the payment of anything of value (e.g. cash or cash equivalents, gifts, travel and entertainment, stock, offers of employment, etc.), directly or indirectly, to any Government Official (hereinafter defined) with the intention of inducing him or her to engage in improper or unlawful conduct or to secure an improper business advantage; (c) has not and will not make facilitation payments or “grease payments” to Government Officials or others in a position of authority to expedite routine non-discretionary government or lawful actions (e.g. processing permits, visas and licenses, scheduling inspections, clearing customs, etc.); and (d) has not and will not offer, promise, give, request, receive or accept anything of value, directly or indirectly, to or from any person for the purpose of influencing, inducing or rewarding the improper performance of an act or decision. For purposes of this clause, the term “Government Official” means any (a) officer or employee of government, department, agency, or instrumentality of a government (government-controlled enterprise); (b) officer or employee of a public international organization; (c) political party or party official; (d) candidate for political office; or (e) other person acting in an official capacity. Breach of the warranty shall give the Government 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.

9.22 Liquidated Damages. It is hereby agreed by the parties hereto that in the event the Contractor has not completed the Scope of Work under the term set forth under this Contract,

[insert liquidated damages in words and (numbers)] for each calendar day or portion thereof shall be due to the Government. The Liquidated damages shall first be deducted from any Contract monies due, but not yet paid to the extent available.

9.23 Documents, Printouts, Etc. All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

9.24 Indemnification. Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government 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 Government.

9.25 Right to Withhold. If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold. No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

9.26 Condition Precedent. This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

9.27 Other Provisions. Other provisions attached hereto as Addenda or Exhibits are a part of this Contract and are incorporated herein by reference.

9.28 Davis Bacon Act. Contractor hereby agrees that it shall comply with all rulings and interpretations of the Davis-Bacon Act (40 USC 276a-5) and that the contractor and subcontractor agrees that all employees shall be paid the local prevailing wages as established by Virgin Islands statutes and laws.

9.29 Notice of Federal Funding. Contractor acknowledges that this Contract may be funded, in whole or in part, by federal funds. 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. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

9.30 Changes In Construction Services. Any changes in the Construction Services may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order subject to the limitations stated herein and 31 V.I. R.R. §§ 242-32 and 242-33. A Change

Order is a written instrument signed by the Government and Contractor stating their agreement upon the change in the Services which are within the Scope of Work, and the amount of the adjustment, if any, in the Contract Sum and Contract Time. Contractor shall have no obligation to proceed with changed work without a Change Order executed in accordance with Virgin Islands law.

9.31 Insurance. Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a “per occurrence” basis with a minimum limit of not less than \_\_\_\_\_ (\$XX,000,000.00) for any one person per occurrence for death or personal injury and \_\_\_\_\_ (\$XX,000,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.
- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than \_\_\_\_\_ (\$XX,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.
- (c) **WORKERS’ COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

9.32 Facsimile, Electronic & Digital Signatures. A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

**(Remainder of page is blank)**

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

**WITNESSES: GOVERNMENT OF THE VIRGIN ISLANDS**

\_\_\_\_\_  
Wynnie Testamark, Commissioner  
Bureau of Corrections  
Date \_\_\_\_\_

\_\_\_\_\_  
Anthony D. Thomas, Commissioner  
Department of Property and Procurement  
Date \_\_\_\_\_

**CONTRACTOR**

\_\_\_\_\_  
[NAME] [TITLE]  
[NAME OF COMPANY]  
Date \_\_\_\_\_

(Corporate seal, if Contractor is a corporation)

APPROVED:

\_\_\_\_\_  
**Honorable Albert  
Bryan Jr.**  
Date: \_\_\_\_\_

GOVERNOR OF THE U.S. VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY: \_\_\_\_\_ Date \_\_\_\_\_

PURCHASE ORDER NO. \_\_\_\_\_



## ADDENDUM I- SCOPE OF SERVICES

In addition to this Public-Private Partnership Agreement, the parties shall enter into a Master Construction Agreement ("MCA") and a Finance and Maintenance Agreement ("FMA") for the design, construction, finance, and maintenance of the Annex. The Master Construction Agreement shall be incorporated into the Public-Private Partnership Agreement by reference. The MCA will include Technical Provisions including a Design Criteria Package and Building Performance Specifications covering performance criteria and specifications for the design, construction, and maintenance of the Annex, including requirements for staffing, space, functional, area requirements and the scope of services to be performed by the Contractor including required levels of maintenance and proposed commercial terms.

Per the MCA, the responsibilities of the Contractor under the Agreement will include the following:

- A. Design: The Contractor will, adhering to the programmatic requirements contained in the Design Criteria Package, design all aspects of the new Annex. The new Annex will comply with the Bridging Documents for USVI BOC Swan Annex Provisions, including any commissioning standards, as well as the Virgin Islands Building Code and any and all applicable laws and regulations. The space standards and design guidelines described in the Bridging Documents for USVI BOC Swan Annex follow those published by the American Correctional Association. Construction standards must follow all applicable codes and standards for any new construction project in the Virgin Islands including but not limited to zoning, building (Virgin Islands Building Code), life safety (National Fire Protection Association), and accessibility (Americans Disability Act).
- B. Permits: The Contractor will obtain all permits necessary for the construction and operation of the new Annex under applicable law, including all necessary building and development permits.
- C. Construction: The Contractor will be responsible for construction and commissioning of the Annex per the programmatic requirements contained in the Bridging Documents for USVIBOC Swan Annex Provisions.
- D. Information Technology: The Contractor will be responsible for the initial provision and fit-out of appropriate, modern information technology equipment for the Annex facility, which may include among other systems for record keeping, system queuing, audio/video conferencing, desktop/laptop utilization, courtroom audio/video recording, and evidence presentation. BOC will retain responsibility for refreshing during term of the Project Agreement.
- E. Contractors: The construction of the Annex will be performed by licensed contractors with demonstrated successful experience in the construction of correctional facilities of comparable scope and complexity. The Developer and the Project Team will employ a Project Manager and Superintendent with demonstrated successful experience in the

construction of correctional facilities of comparable scope and complexity.

**F.** Design Phase Responsibilities: The Contractor or designee will serve as architect-of-record, obtain all necessary permits, including but not limited to building permits and earth change or CZM permits, provide all necessary information for GMP packages, including packages for alternates, and bidding out work to subcontractors, and construction administration and the following:

- 1) Participation in program development and/or refinement of existing programming including coordination with the BOC design review architect and the BOC correctional facility master plan.
- 2) Cost estimating to determine budgets.
- 3) Schematic and design development incorporating BOC's bridging document plans and specifications.
- 4) Preparation of construction documents, including specifications.
- 5) Development of contractor notices and schedule.
- 6) Direction and coordination of pre-bid construction conferences.
- 7) Assisting the BOC in bid openings and analysis of bid documents, preparation of results and GMP.
- 8) Making application for and securing all necessary permits and approvals.
- 9) Providing necessary drawings and specifications as requested by utility companies.
- 10) Administration of the contract for construction, including site inspection and observation.
- 11) Review and recommendation for approval of pay requests, change orders, and time extensions in compliance with the FEMA Public Assistance Program and Preparation of all closeout materials, including transfer of maintenance manuals and record drawings for submittal to BOC.
- 12) Attendance at BOC meetings related to the project, as needed.
- 13) Providing warranty evaluation during the two-year warranty period.
- 14) Other services as required by statute, regulations, contract, standards of the practice, or mutually agreeable to the owner and architect.

## J. Federal / Local Approvals

BOC will provide Site information that may include but may not be limited to: Environmental, Geotechnical, property and underground utilities surveys, as well as a legal description of the property and any previously published planning documents and due diligence information related to the selected Site. However, the Contractor will be responsible for obtaining all permits and approvals necessary for the Project.

- Geotechnical: If performed, the Contractor shall provide new geotechnical testing, and soil borings to determine load bearing capacity of the Site, interpret the testing data and provide a geotechnical report to BOC.
- Hazardous Material: If performed, the Contractor shall provide an environmental assessment and report of the Site and will disclose any potential hazardous material impact to BOC.
- Utilities: The Contractor will coordinate all utility interfaces with BOC including, but not limited to, central chilled water piping, electrical infrastructure, underground sanitary and storm water connections, and fire mains.
- Agreements with Utility Companies: The Contractor will seek construction phase and final operating agreements with utility companies including but not limited to the Virgin Islands Water and Power Authority and VI Waste Management Authority and any other required utility companies.
- Permitting: The Contractor will obtain planning, building, and zoning permits from the Department of Planning and Natural Resources.

## ADDENDUM II- COMPENSATION

In addition to this Public-Private Partnership Agreement, the parties shall enter into a Finance and Maintenance Agreement (“FMA”) for the finance and maintenance of the Annex. The Finance and Maintenance Agreement shall be incorporated into the Public-Private Partnership Agreement by reference. The FMA will include provisions related to:

- A. Finance: The Contractor will provide all financing necessary for the Project, including any required Equity, outside of the BOC’s Contribution.
- B. Lifecycle Maintenance: The Contractor will be responsible during the Term of the Agreement for lifecycle maintenance, repairs, and capital replacement necessary to sustain the Annex to the level of operation described in the Bridging Documents for USVI BOC Swan Annex Provisions. At the conclusion of the operations and maintenance contract term, the Annex shall be turned over to BOC in the condition specified by the Handback Requirements that will be part of the contract.
- C. Continuing Occupancy and Per Diem. Per the FMA, the parties will agree to USVI’s continuing occupancy and per diem payment with Contractor in exchange for periodic payments by USVI’s BOC. The FMA will, among other things, obligate the Contractor to design, build, finance, and maintain the Annex for a period of no more than 20 years.
- D. Availability Payment Structure and Source of Funding. The availability payment concession structure for the Agreement is intended to include the following features:
  - 1. Periodic availability payments to be paid according to an agreed upon schedule with the Contractor as set forth in the Agreement commencing on the date of Substantial Completion and for the remaining years of the Project Agreement, but no longer than Twenty (20) years. In the Finance and Maintenance Agreement, BOC will covenant to budget and appropriate availability payments from non-ad-valorem sources.
  - 2. The Agreement will permit BOC to make deductions from the availability payments in the event of poor performance or if the Contractor fails to make the functional areas available for use as required therein, or the performance of any of the Contractor obligations to operate and maintain the Project fail to meet the specified performance levels at any time during the term of the Project. Deductions will be subject to and made in accordance with pre-determined formulas agreed to and outlined in the Finance and Maintenance Agreement.
- E. Developer Financial Responsibilities. The Contractor shall provide any and all financing required to meet its obligations under Public-Private Partnership Agreement. The financing may be provided through private debt or equity, for the anticipated costs of the Project including reasonable reserves to address construction, design and operation lifecycle replacement and contingencies. The Contractor shall not be authorized to mortgage, pledge, or assign the Project or any of Contractor interests under the Project to obtain financing without the Government of the Virgin Island’s express written approval. Contractor may not use the full faith and credit of the Government of the Virgin Island to secure financing. The Contractor must have the capacity to finance the Project from design and construction

through the full operating period to the end of the term of the Project and meet Project funding demands for each phase.