

## CONSTRUCTION CONTRACT

THIS AGREEMENT is made this 24th day of March, 2022, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the **Virgin Islands Department of Education** (hereinafter referred to as "Government") and **Grade All Heavy Equipment, Inc** (hereinafter referred to as "Contractor").

### WITNESSETH:

WHEREAS, the Government is in need of a contractor to furnish all labor, materials and equipment necessary for the **Demolition of Buildings A, B and C of the Charlotte Amalie High School on St. Thomas, Virgin Islands** in strict accordance with the plans and specifications (incorporated by reference and made a part of this contract), which duties and responsibilities are more particularly described in *Addendum I*, (Scope of Work), *Addendum II* (General Provisions and Warranties together with the additional General Provisions – Construction), *Addendum III* (Termination of Contracts), *Addendum IV* (Compensation), *Addendum V* (Provisions from 2 CFR 200.326), *Addendum VI* (HUD General Provisions "HUD Rider"), and *Addendum VII* (DBE Requirements), attached hereto; 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 written instrument, the parties hereto do covenant and agree as follows:

#### 1. SERVICES

The Contractor will provide the services described more particularly in Addendum I (Scope of Work) incorporated herein by reference and made a part of this construction contract.

#### 2. TERM

This Contract shall commence upon execution by the Governor and shall terminate **July 31, 2023**, from the issuance of the formal Notice to Proceed, or in accordance with an agreed upon extension pursuant to the General Provisions.

#### 3. COMPENSATION

The Government, in consideration of satisfactory performance of the services described in Addendum I (Scope of Work), agrees to pay the Contractor the sum of Six **Million Eight Hundred Seventy-Nine Thousand One Hundred Fifty-Eight Dollars and Ninety-Two Cents (\$6,879,158.92)**, in accordance with the provisions set forth in Addendum IV (Compensation), attached hereto is hereby incorporated by reference and made a part of this contract.

**4. LIQUIDATED DAMAGES** 24th March

It is hereby expressly agreed by the parties hereto that in the event the Contractor has not completed the scope of work under the term set forth in Paragraph 2 hereof, **Four Hundred Fifty Dollars (\$450.00)** for each calendar day or portion thereof shall be due the Government. The liquidated damages shall first be deducted from any contract monies due, but not yet paid to the extent available.

**5. RECORDS**

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

**6. PROFESSIONAL STANDARDS**

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

**7. DOCUMENTS, PRINTOUTS, ETC.**

Certified copies of 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, or at the Government's request, during the life of the 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.

**8. LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipt, excise, and social security taxes for Contractor, its servants, agents or independent contractors.

**9. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this contract without the prior written approval of the Government.

**10. INDEMNIFICATION**

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

**11. 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.

**12. GOVERNING LAW**

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction and venue are exclusive in the United States Virgin Islands.

**13. 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 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 Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

**14. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

**15. 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 the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

**16. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor. <sup>24th</sup> <sup>March</sup>

**17. TERMINATION**

Either Party will have the right to terminate this contract with cause on ten (10) days written notice to the other party specifying the date of termination. The attached "Addendum III-Termination of Contracts for the Convenience of the Government" is hereby fully incorporated herein by reference and is made a part of this agreement.

**18. PARTIAL TERMINATION**

The performance of work under this contract may be terminated by the Government in part, whenever the Government shall deem such termination advisable by providing ten (10) days written notice to the Contractor. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this contract are terminated and the date upon which such termination 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 ten (10) days' notice.

**19. CONFIDENTIAL INFORMATION**

It is understood and agreed that Contractor, including but not limited to its employees, agents and assign, shall maintain as confidential all information that Government may disclose to Contractor. Contractor shall take all steps to protect and to not disclose this information, unless the information is either:

- i. known to the disclosing party prior to its receipt from the other party without a limitation or obligation of confidentiality under another agreement;
- ii. independently developed by the disclosing party without use of the other party's protected information or data;
- iii. in the public domain at the time of disclosure through no fault of the disclosing party;
- iv. received from a third party with a legal or contractual right to disclose such information or data; or
- v. required to be disclosed as a result of a legal obligation to do so; provided, however, that the disclosing party shall provide 10 days' prior written notice to the other party of its intention to disclose such information.

**20. 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, sex, religion, disability or national origin.

**21. CONFLICT OF INTEREST**

(a) Contractor covenants that it has ~~no~~<sup>24th</sup> 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.

(b) Contractor 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, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provisions set forth in section 1108 thereof;
  - (ii) not made, negotiated or influenced this contract, in its official capacity; and
  - (iii) no financial interest in the contract as that term is defined in section 1101, (1) of said Code chapter.

**22. EFFECTIVE DATE**

The effective date of this Contract is upon the execution by the Governor.

**23. NOTICE**

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 Subbase, 3<sup>rd</sup> Floor  
U. S. Virgin Islands 00802

**Racquel Berry Benjamin**  
**Commissioner**  
Virgin Islands Department of Education  
1834 Kongens Gade  
St. Thomas, Virgin Islands 00802

**CONTRACTOR**

**Eric W. Castro**  
**President**  
Grade All Heavy Equipment, Inc  
8168 Crown Bay Marina, Suite 310  
St. Thomas, Virgin Islands 00802

**24. LICENSURE**

The Contractor covenants that it has: <sup>24th</sup> March

- a. obtained all of the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and
- b. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

**25. CONTRACTOR'S REPRESENTATIONS**

The Contractor agrees 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, and that it has been engaged in and now does such work and represents that it is fully equipped, competent, and capable of performing the work and is ready and willing to perform such work. The Contractor agrees further to begin work not later than the date indicated on the formal Notice to Proceed and complete the work within the number of days specified in the proposal or as extended in accordance with the General Provisions of the Contract.

The Work shall be done under the direct supervision of the Government, and in accordance with the laws of the Government and its Rules and Regulations thereunder issued and any and all applicable federal rules and regulations. The parties hereto agree that this contract shall, in all instances, be governed by the Laws of the Government of the Virgin Islands.

**26. WARRANTY OF NON-SOLICITATION**

The Contractor expressly warrants that it nor its officers, agents or employees has employed no person to solicit or obtain this contract on its behalf, or to 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 nor its officers, agents or employees 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 him hereunder; and that it nor its officers, agents or employees has not, in estimating the contract price demanded by it 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, or supposed to have been rendered, in the procurement of this contract.

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.

**27. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, 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 claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

24th March

**28. DEBARMENT CERTIFICATION**

By execution of this contract, the Contractor 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. The Contractor 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 the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

**29. NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is 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 offense.

**30. 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.

**31. FORCE MAJEURE**

The Parties' performance under this Agreement shall be excused so long as the force majeure event prevents the performance of any obligation hereunder when such delay is occasioned by events or occurrences beyond their control, including but not limited to, acts of God, war or threat of war, government retaliation against foreign or domestic enemies, terrorism, governmental regulation, civil disorder, adverse governmental actions or conditions, epidemic, pandemic, recognized health threats as determined by the Centers for Disease Control and Prevention (CDC) or local health agency, disaster, fire, strikes either real or threatened curtailment of transportation facilities, or other similar cause beyond the control of the Parties (collectively, "Force Majeure"), making it from an economic, political, personal safety, or policy basis, illegal, inadvisable, or objectively impossible or commercially unreasonable to fulfill the terms of this Agreement. This Agreement may be terminated, and/or specific nonperformance or under-performance may be excused, without penalty or payment, except for those Services already provided, for any one or more of such reasons by written notice from the other Party.

### **32. 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.

### **33. OTHER PROVISIONS**

Addendum I (Scope of Work), Addendum II (General Provisions and Warranties together with the additional General Provisions – Construction), Addendum III (Termination of Contracts), Addendum IV (Compensation), Addendum V (Provisions from 2 CFR 200.326), Addendum VI (HUD General Provisions “HUD Rider”), and Addendum VII (DBE Requirements), attached hereto; and

### **34. 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 one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) 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) **WORKERS’ COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

### **35. PAYMENT AND PERFORMANCE BONDS**

The Contractor shall comply with the following bonding requirements:

- (a) A performance bond to secure Contractor’s obligations and performance under the contract for 100% of the Base Bid’s price of Three Million Seven Hundred Seventy-Nine Thousand One Hundred Fifty-Eight Dollars and Ninety-Two Cents (\$3,779,158.92);
- (b) A payment bond to assure payment to all persons supplying labor and material in the execution of the work provided for in the contract for 100% of the Base Bid’s price of Three Million Seven Hundred Seventy-Nine Thousand One Hundred Fifty-Eight Dollars and Ninety-Two Cents (\$3,779,158.92);
- (c) A retainage of 25% of progress payments until the value of work totaling the Base Bid price has been completed;
- (d) Upon completion of the value of work totaling Three Million Seven Hundred



Seventy-Nine Thousand One Hundred Fifty-Eight Dollars and Ninety-Two Cents (\$3,779,158.92) and acceptance of said work by the Government, Contractor shall furnish additional payment and performance bonds, both with a penal sum of Three Million One Hundred Thousand Dollars and Zero Cents (\$3,100,000.00), to the satisfaction of the Government, at which time the Government will release 15% of the retainage.

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

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**WITNESSES:**




**GOVERNMENT OF THE VIRGIN ISLANDS**

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

Date: 3/9/2022



  
**Racquel Berry - Benjamin**  
Commissioner  
Virgin Islands Department of Education

Date: 01/28/2022



**CONTRACTOR**

  
**Eric W. Castro**  
President  
Grade All Heavy Equipment, Inc

Date: 01-21-22

*(Corporate seal, if Contractor is a corporation)*

**APPROVED:**



**Albert Bryan Jr**  
GOVERNOR OF THE VIRGIN ISLANDS

Date: 3/24/22

APPROVED AS TO LEGAL SUFFICIENCY  
AT THE DEPARTMENT OF JUSTICE BY:  
Date 3/10/2022

  
Assistant Attorney General

Purchase Order No.