CONSTRUCTION CONTRACT

THIS AGREEMENT made as of the ____ day of _____, 2017 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 Department of Public Works (hereinafter referred to as "Government') and **Island Roads Corporation** (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 **Crown Bay Road (Route 33 & 304) Pedestrian and Drainage Improvement on St. Thomas United States 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 Section I, Section II, and Section III of the Contract Book attached hereto; and

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

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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. WORK

The Contractor will provide the services described more particularly in Section I (Bid Schedule) 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 **Three hundred (300)** calendar days thereafter, or in accordance with an agreed upon extension pursuant to the General Provisions in Section II of the Contract Book. Particular reference should be made to the Notice to Proceed.

3. COMPENSATION

The Government, in consideration of satisfactory performance of the services described in Section I, agrees to pay the Contractor the sum of **Two million Eight hundred Sixteen thousand Nine hundred Forty Nine dollars and zero cent ($2,816,949.00)** in accordance with the provisions set forth in Section II (Schedule of Amounts, Periodical Pay Estimate, and

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Change Order), attached hereto is hereby incorporated by reference and made a part of this contract.

4. LIQUIDATED DAMAGES

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, liquidated damages of **Two thousand Two hundred dollars and zero cent ($2,200.00)** 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

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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 the 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 or whatsoever nature, including but not limited to unemployment insurance and social security taxes of 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 particularly 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

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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 its option, 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.

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 "Contract Book Section II, Paragraph 51 and 52 of the General Provisions" is hereby fully incorporated herein by reference and is made part of this agreement.

18. 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.

19. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to perform under this Contract.

(b) Contractor further covenants that it is:

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(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 of employee and, as such,

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;

iii. no financial interest in the contract as that term is defined in section 1101 (1) of said Code chapter.

20. EFFECTIVE DATE

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

21. 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

Lloyd T. Bough, Jr.
Commissioner
Department of Property and Procurement
8201 Sub Base, 3rd Floor
St. Thomas, Virgin Islands 00802

Nelson Petty, Jr.
Acting Commissioner
Department of Public Works
8244 Subbase
St. Thomas, Virgin Islands 00802

CONTRACTOR

Andy Smith
President
Island Roads Corporation
6501 Red Hook Plaza, Suite 201
St. Thomas, Virgin Islands 00802

22. LICENSURE

The Contractor covenants that it has:

a. Obtained all of the applicable license or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and

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b. Familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

23. CONTRACTOR'S REPRESENTATIONS

The Contractor agrees that he 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 he has been engaged in and now does such work and represents that he 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 it 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.

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24. WARRANTY OF NON-SOLICITATION

The Contractor expressly warrants that he has employed no person to solicit or obtain this contract on his 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 he 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 received by him hereunder; and that he has not, in estimating the contract price demanded by him included any such by reason of such brokerage, commission or percentage; and that all monies payable to him 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.

25. DEBARMENT CERTIFICATION

By execution of this contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and

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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.

26. 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.

27. 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.

28. DAVIS BACON ACT

Contractor herby 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 statues and laws.

29. CERTIFICATION OF EMPLOYMENT

Contractor herby 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.

30. OTHER SPECIFICATIONS AND PROVISIONS

Section I through Section III of the Contract Book attached hereto, documentation included in the **Invitation Bid Package**, and **Plans/Specifications** are hereby incorporated by reference and made a part of this Contract.

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The valid Specifications for this contract is the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-14) including errata and amendments, with the exception of Part 100 and any reference to Federal Acquisition Regulation Contract clause contained in FP-14 is also modified by any pertinent supplemental specifications as included in Section III.

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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

_____ _____ **Date:** 10/5/17

Lloyd T. Bough, Jr.
Commissioner
Department of Property and Procurement

_____ _____ **Date:** 8/29/17

Nelson Petty, Jr.
Acting Commissioner
Department of Public Works

CONTRACTOR

_____ _____ **Date:** 8/15/2017

Andrew Smith, President
Island Roads Corporation
(Corporate seal, if Contractor is a corporation)

APPROVED:

_____ Date: 10-06-17

Kenneth E. Mapp
GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: _____ Date Oct. 5, 2017

Purchase Order No.:

C017DPWT17 (IRC)
IFB019DPWT17 (C)

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