

CONTRACT FOR PROFESSIONAL SERVICES

Engineering Design Veterans Drive, Route No. 30, Phases 1A, 1B & 2
Federal-Aid Project No. DPC-A034(1)

THIS AGREEMENT made as of the 1st day of March, 2019 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 **WSP USA Inc., formerly known as Parsons Brinckerhoff, Inc. formerly known as PB Americas Inc., formerly known as Parsons, Brinckerhoff, Quade & Douglas, Inc.** (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

WHEREAS, pursuant to Contract No. PC-PWD-97-94 approved by the Government on May 6, 1994, the Government contracted with Contractor to provide professional services relative to the design of improvements to Veterans Drive, Route Number 30 and Raphune Hill Bypass, Route Number 38; and

WHEREAS, The Government solicited services for Contract No. PC-PWD-97-94 under Request for Proposals No. RFP-0005-93; and

WHEREAS, in Contract No. PC-PWD-97-94, the scope was separated into three parts, Part A - for the re-evaluation of an approved Environmental Impact Statement and final design of Raphune Hill Bypass, Part B – for the environmental study and preliminary design of Veterans Drive, and Part C – authorization to proceed and cost for the final design of Veterans Drive to be determined after the completion of Part B; and

WHEREAS, on August 6, 1996, Contract No. PC-PWD-97-94 was amended by Contract No. PC-PWD-183-96 (Amendment 1) for the purposes of directing the consultant to stop work and close out Part A with all unexpended funds transferring to Part B and a portion of funds as uncommitted; and

WHEREAS, on November 7, 1996, Contract No. PC-PWD-97-94 and PC-PWD-183-96 was amended by Contract No. PC-PWD-277-96 (Amendment 2) for the purposes of increasing the maximum compensation for Part B to include contract labor and lease vehicles for the benefit of the Government; and

WHEREAS, on December 8, 1997, Contract No. PC-PWD-97-94, PC-PWD-183-96, and PC-PWD-277-96 was amended on the contract by Contract No. PC-PWD-195-97 (Amendment 3) for the purposes of increasing the maximum compensation to include the design for mitigation of Fort Christian and Legislature Building; and

WHEREAS, on September 18, 2002, Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, and PC-PWD-195-97 was amended by Contract No. PC-PWD-122-2002 (Amendment 4) for the purposes of increasing the maximum compensation to

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include changes in design criteria, local coordination / urban planning, and additional environmental services; and

WHEREAS, on December 29, 2004, Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, PC-PWD-195-97, and PC-PWD-122-2002 was amended by Contract No. PC-PWD-006-2005 (Amendment 5) for the purposes of increasing the maximum compensation to include environmental services for sampling and testing for lead and related design changes and the term was extended for an additional 24 months, ending November 8, 2006; and

WHEREAS, on March 6, 2006, Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, PC-PWD-195-97, PC-PWD-122-2002, and PC-PWD-006-2005 was amended by Contract No. PC-PWD-006-2005 (Amendment 6) for the purposes of extending the term for an additional 12 months, ending November 8, 2007, and increasing the compensation for Part C for the final design of Veterans Drive including provisions for relocating the Coast Guard Station and plans for the relocation of the fire station; and

WHEREAS, on November 16, 2009, the Governor signed Contract No. PC-DPW-118-2009 for the purposes of reinstating Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, PC-PWD-195-97, PC-PWD-122-2002, and PC-PWD-006-2005 and extending the term by fifteen (15) months ending on February 16, 2011; and

WHEREAS, on February 16, 2011, Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, PC-PWD-195-97, PC-PWD-122-2002, PC-PWD-006-2005, and PC-PWD-006-2005 was amended by Contract No. PC087DPW11 (Amendment 7) for the purposes of increasing the total maximum compensation for Part C related to design changes regarding the selection of the alternative option to shift the roadway alignment into the harbor away from the shoreline at the Legislature promontory and complete reconstruction and widening of the segment of Veterans Drive from Windward Passage to Tolbod Gade and extending the term for an additional 15 months, ending May 16, 2012; and

WHEREAS, on May 3, 2012, Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, PC-PWD-195-97, PC-PWD-122-2002, PC-PWD-006-2005, PC-PWD-006-2005, and PC087DPW11 was amended by Contract No. PC075DPW12 for the purposes of extending the term by twelve (12) months; and

WHEREAS, on December 31, 2013, the Government executed Contract No. PC-043-DPW-14 which reinstated Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, PC-PWD-195-97, PC-PWD-122-2002, PC-PWD-006-2005, PC-PWD-006-2005, PC087DPW11 and PC075DPW12 and extended the term to February 28, 2014; and

WHEREAS, on March 1, 2014, Contract No. PC-PWD-97-94, PC-PWD-183-96, PC-PWD-277-96, PC-PWD-195-97, PC-PWD-122-2002, PC-PWD-006-2005, PC-PWD-006-2005, PC087DPW11, PC075DPW12, and PC-043-DPW-14 expired; and

WHEREAS, on March 1, 2014 the Government desired additional services required to complete the final design for the improvements to Veterans Drive and entered into an agreement, Contract No. PC070DPW14, with the CONTRACTOR; and

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WHEREAS, Contract No. PC070DPW14 includes services required due to revisions to the design of the Legislature Peninsula based on requirements from DPNR State Historical Preservation Office (SHPO), coordination with private stakeholders St Thomas – St John Chamber of commerce and Downtown Revitalization Inc., incorporation of private stakeholders consultant (Dover Kohl) design, and additional services required to obtain Coastal Zone Management permit for the Phase II portion of the project; and

WHEREAS, on April 30, 2017, Contract No. PC070DPW14 expired, and

WHEREAS, the GOVERNMENT desires to engage the CONTRACTOR to provide additional services, not included in Contract No. PC070DPW14 that are required to complete the project, as detailed in Task 1 - Addendum I (Scope of Work), attached hereto; and

WHEREAS, the GOVERNMENT desires to engage the CONTRACTOR to provide services, not completed under Contract No. PC070DPW14 prior to the contract's expiration, as detailed in Tasks 2 through 7 in Addendum I (Scope of Work), attached hereto; and

WHEREAS, all services contained in Addendum I (Scope of Work) are related to and required to complete the project under Request for Proposals No. RFP-0005-93; and

WHEREAS, the accomplishment of the services described hereinafter is authorized by Federal Highway Administration (FHWA) under Title 23 U.S.C. 215; 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 in Addendum I (Scope of Work) attached hereto and made a part of this contract.

2. TERM

Upon the execution by the Governor of the U.S. Virgin Islands, the term of this contract shall be effective from March 1, 2017 through June 30, 2023. The Government in its sole discretion, shall have the option to renew this Contract for a period of one (1) additional year subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.

3. COMPENSATION

The Government in consideration of the satisfactory performance of the services outlined in Addendum I (Scope of Work) agrees to the pay Contractor a sum not to exceed **Three Million Four Hundred Eleven Thousand Eight Hundred Fifty-Two and 06/100 Dollars (\$3,411,852.06)** in accordance with the following:

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- (1) The Government, in consideration of the satisfactory performance of the services outlined in Task 1 of Addendum I (Scope of Work) agrees to pay the Contractor the lump sum of **Eighty Thousand Six Hundred Thirty-Nine and 73/100 Dollars (\$80,639.73)** in accordance with the provisions set forth in Addendum II (Task 1 - Additional Services Not Included in Original Contract PC-070-DPW-14).
- (2) The Government, in consideration of the satisfactory performance of the services described in Addendum I, Tasks 2 through 7, agrees to pay the Contractor on the basis of Actual Costs including the cost of Subcontracted Services plus a fixed fee which together shall not exceed the Maximum Total Compensation of **Three Million Three Hundred Thirty One Thousand Two Hundred Twelve and 33/100 Dollars (\$3,331,212.33)** in accordance with the provisions set forth in Addendum II (Compensation), attached hereto is hereby incorporated by reference and made a part of this contract. The Government shall not be obligated to make payment to the Contractor beyond the Maximum Total Compensation, nor shall the Contractor be obligated to incur costs beyond the Maximum Total Compensation
- (3) TRAVEL EXPENSES - Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed **Ninety-Two Thousand Fifty and 00/100 Dollars (\$92,050.00)**.

4. RECORDS

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

5. 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.

6. 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 the Contractor or by any other person or entity except upon the written permission of the Government.

7. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor 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,

liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

8. ASSIGNMENT

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

9. 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, to the extent resulting from the negligent performance of services by Contractor under this Contract.

10. 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.

11. GOVERNING LAW

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

12. 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.

13. 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.

14. 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.

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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.

15. CONDITION PRECEDENT

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

16. TERMINATION

Either party will have the right to terminate this contract with or without cause on thirty (30) days written notice to the other party specifying the date of termination.

17. 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 thirty (30) 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 thirty (30) day notice.

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 be performed 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 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 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 shall be the day of execution of the Contract 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

Anthony D. Thomas
Commissioner Nominee
Department of Property and Procurement
Sub Base, Building No. 1, Third Floor
St. Thomas, VI 00802

Nelson M. Petty Jr, P.E.
Commissioner
Department of Public Works
8244 Sub Base
St. Thomas, VI 00802

CONTRACTOR

Ronald M. Colas, P.E. , S.I.
Vice President, Senior Area Manager
WSP USA Inc. (formerly known as Parsons
Brinckerhoff, Inc.)
7650 Corporate Center Drive, Suite 300
Miami, Florida 33126

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

23. OTHER PROVISIONS

Addenda I, II, IIa, IIb, IIc, IId, III, IV and V attached hereto are a part of this Contract and are incorporated herein by reference.

24. 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

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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.

25. 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.

26. 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.

27. 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 anyone 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) **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 one million dollars (\$1,000,000.00) 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.

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

WITNESSES:

Charles L. Dull
Carla Smith
Kimble
Ward

GOVERNMENT OF THE VIRGIN ISLANDS

Anthony D. Thomas Date: 5.30.18
Anthony D. Thomas
Commissioner Nominee
Department of Property and Procurement

Nelson M. Petty Jr. Date: 4/17/19
Nelson M. Petty Jr., P.E.
Commissioner
Department of Public Works

CONTRACTOR

Ronald M. Colas
Manace

Ronald M. Colas Date: 04-11-19
Ronald M. Colas, P.E., S.I.
Vice President, Senior Area Manager
WSP USA Inc. (f.k.a. Parsons Brinckerhoff Inc.)

APPROVED:

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

Date: 7/24/19

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: *Carl P. [Signature]* Date 6/24/19
APG

Purchase Order No.:

Contract No. P042DPWT19

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