

**REINSTATEMENT OF PROFESSIONAL SERVICES AGREEMENT**

**for Engineering Design Relative to the Design of Improvements to  
Bordeaux Bay Road  
Route Number 318  
St. Thomas, Virgin Islands**

**REINSTATEMENT No. 1**

**Federal-Aid Project No. VI-318 (3)  
Contract No.: PC076DPW12**

---

**THIS AGREEMENT** made as of the 3<sup>rd</sup> day of November 2014 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 Parsons Brinckerhoff, Inc. (hereinafter referred to as "**CONTRACTOR**").

Both parties witness to being duly authorized to execute this agreement and will attest accordingly when and where necessary.

**WITNESSETH**

**WHEREAS**, pursuant to Agreement No. PC076DPW12 approved by the Governor on May 28, 2012 (which constitutes and is hereinafter referred to as "the Contract"), the **GOVERNMENT** contracted with **CONTRACTOR** to provide Engineering Design relative to the Design of Improvements to Bordeaux Bay Road, Route Number 318; and

**WHEREAS**, pursuant to Amendment of Professional Service Contract PC107DPW13, the parties amended the contract to extend its term for an additional eighteen (18) months, which expired pursuant to its term on May 27, 2014; and

**WHEREAS**, the parties desire to reinstate the Contract, to extend its term an additional eighteen (18) months to expire on November 27, 2015; and

**WHEREAS**, the additional time is necessary to complete the final design and preparation of construction documents for the design project due to delay in receiving the geotechnical report for a third party (Jaca & Sierra Testing Laboratories), and

**WHEREAS**, the reinstatement of the contract pursuant to this Reinstatement of Professional Services Contract shall not result in any change to the scope of work provided for under the Agreement and shall not require an increase to the compensation originally provided for under the Agreement.

---

*REINSTATEMENT No. 1*

*Professional Services Agreement for Engineering Design Relative to the Design of Improvements to Bordeaux Bay Road Route Number 318 St. Thomas, Virgin Islands*

*Federal-Aid Project No. VI-318(3)*

PC010DPW15  
Contract No.: PC010DPW15

NOW THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**TERMS AND CONDITIONS**

1. The Professional Services Agreement is hereby extended for eighteen (18) additional months from the date of expiration to terminate on November 27, 2015.

2. This Reinstatement of the Professional Services Agreement is subject to the approval of the Governor of the Virgin Islands.


3. Except as expressly amended in this Reinstatement No. 1 of Professional Services Agreement, all terms of the Professional Services Agreement PC076DPW12 and Amendment No. 1 PC107DPW13 remain in full force and effect.

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

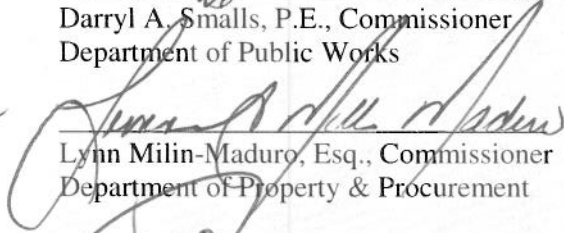
**WITNESS:**

**GOVERNMENT OF THE VIRGIN ISLANDS**

  
\_\_\_\_\_  
Lisa Hill

  
\_\_\_\_\_  
Darryl A. Smalls, P.E., Commissioner  
Department of Public Works

9/15/14  
Date


  
\_\_\_\_\_  
Lynn Milin-Maduro, Esq., Commissioner  
Department of Property & Procurement

10/25/14  
Date

**WITNESS:**

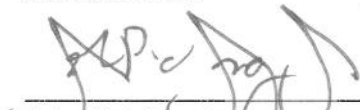
**CONTRACTOR**

  
\_\_\_\_\_

  
\_\_\_\_\_  
Ronald M. Colas, P.E., SI  
Vice President-Senior Area Manager  
Parsons Brinckerhoff, Inc.


07/10/2014  
Date

**APPROVED:**

  
\_\_\_\_\_  
John P. deJongh, Jr.  
Governor of the Virgin Islands

Date: 11/3/14

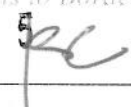
**Approved For Legal Sufficiency Department of Justice:**

By:   
\_\_\_\_\_

Date: 10-28-14

REINSTATEMENT No. 1

Professional Services Agreement for Engineering Design Relative to the Design of Improvements to Bordeaux  
Bay Road Route Number 318 St. Thomas, Virgin Islands  
Federal-Aid Project No. VI-318(3)

PC010DPW15  
Contract No.: 

**AMENDMENT OF**

**PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** made as of the 5<sup>th</sup> day of June 2013 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 Parsons Brinckerhoff, Inc. (hereinafter referred to as "**CONTRACTOR**").

Both parties witness to being duly authorized to execute this agreement and will attest accordingly when and where necessary.

**WITNESSETH**

**WHEREAS**, pursuant to Contract No. PC076DPW12 approved by the Governor on May 28<sup>th</sup>, 2012, the **GOVERNMENT** contracted with **CONTRACTOR** to provide Engineering Design relative to the Design of Improvements to Bordeaux Bay Road, Route Number 38; and

**WHEREAS**, the Agreement will expire pursuant to its terms on May 28<sup>th</sup>, 2013; and

**WHEREAS**, the parties desire to further amend the Agreement to extend its term for twelve (12) additional months to expire on May 28<sup>th</sup>, 2014; and

**WHEREAS**, the extension of the Agreement pursuant to this Amendment of Professional Services Agreement shall not result in any change to the scope of work provided for under the Agreement and shall not require an increase to the compensation originally provided for under the Agreement.

**NOW THEREFORE**, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

PC107DPW13

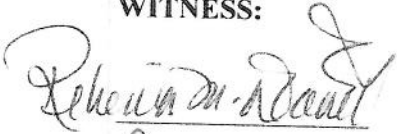
**TERMS AND CONDITIONS**


1. The Professional Services Agreement, is hereby extended for twelve (12) additional months from the date of expiration to May 28<sup>th</sup>, 2014.
2. This Amendment of the Professional Services Agreement is subject to the approval of the Governor of the Virgin Islands.
3. Except as expressly amended in this Amendment of Professional Services Agreement, all terms of the Agreement, remain in full force and effect.

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

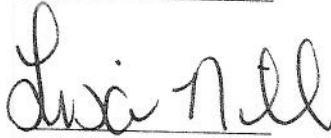
**WITNESS:**

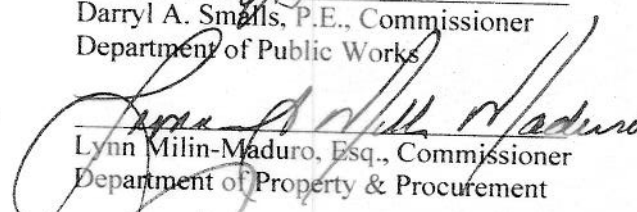
**GOVERNMENT OF THE VIRGIN ISLANDS**



  
Darryl A. Smalls, P.E., Commissioner  
Department of Public Works

5/9/13  
Date




  
Lynn Milin-Maduro, Esq., Commissioner  
Department of Property & Procurement

5/28/13  
Date

**WITNESS:**

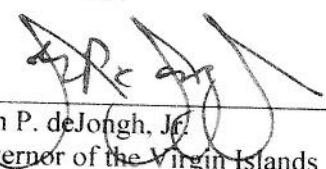
**CONTRACTOR**



  
Ronald M. Colas, P.E., SI  
Vice President-Senior Area Manager  
Parsons Brinckerhoff, Inc.

04/29/13  
Date

**APPROVED:**

  
John P. deJongh, Jr.  
Governor of the Virgin Islands

Date: 6/5/13

**Approved For Legal Sufficiency Department of Justice:**

By: 

Date: 5/28/13

PC107DPW13

Project No. VI-318(3)

PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING DESIGN  
RELATIVE TO THE DESIGN OF IMPROVEMENTS  
TO BORDEAUX BAY ROAD  
ROUTE NUMBER 318  
ST. THOMAS ISLAND, U.S. VIRGIN ISLANDS

\*\*\*\*\*

RFP-0007-2011

Contract No.

PCD76DPWR2

PROFESSIONAL SERVICES AGREEMENT  
FOR  
ENGINEERING DESIGN  
RELATIVE TO THE DESIGN OF IMPROVEMENTS  
TO BORDEAUX BAY ROAD  
ROUTE NUMBER 318  
ST. THOMAS ISLAND, U.S. VIRGIN ISLANDS

\*\*\*\*\*

THIS AGREEMENT, made and entered into this 25<sup>th</sup> day of May, 2012, by and between the DEPARTMENT OF PROPERTY AND PROCUREMENT, GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES, Charlotte Amalie, St. Thomas, Virgin Islands, on behalf of the DEPARTMENT OF PUBLIC WORKS, hereinafter referred to as the "GOVERNMENT", by and through its Commissioner, hereinafter referred to as the "COMMISSIONER" and Parsons Brinckerhoff, Inc. whose office is located at 7300 Corporate Center Drive, Suite 600, Miami, Florida 33126, hereinafter referred to as the "CONSULTANT".

WHEREAS, the accomplishment of the services described hereinafter is authorized by Federal Highway Administration (FHWA) under Title 23 U.S.C. 215.

WHEREAS, the GOVERNMENT desires to engage the CONSULTANT to render services as hereinafter set forth, for the preparation of necessary reports, designs, drawings, specifications and other documents, and

WHEREAS, the GOVERNMENT through the Department of Property and Procurement requested and received proposals for certain professional engineering services, and

WHEREAS, a Selection Committee reviewed the proposals received and selected the proposal of the CONSULTANT as the most qualified to provide the needed services.

NOW, THEREFORE, the parties hereto do mutually agree and covenant as follows:

ARTICLE I – SERVICES BY THE CONSULTANT

1.1 The CONSULTANT shall upon receipt of a fully executed copy of this agreement, perform the services described in Attachment 1, Scope of Services, which is attached hereto and made part of this Agreement.

1.2 All engineering services required under this Agreement shall be performed under the direction of a professional engineer who shall be registered in the United States Virgin Islands. The extent and character of the work to be done by the CONSULTANT shall be subject to the general oversight, supervision, direction, control and approval of the COMMISSIONER.

1.3 All services shall be performed by the CONSULTANT to the satisfaction of the COMMISSIONER who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of these services hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be left to the discretion of the COMMISSIONER and supplemental agreement(s) of such a nature as required may be entered into by the parties in accordance herewith and Virgin Islands' law.

1.4 The CONSULTANT shall coordinate the work required herein with the technical representatives of the COMMISSIONER. The representatives shall be designated by the COMMISSIONER.

ARTICLE II – ADDITIONAL SERVICES

2.1 The GOVERNMENT may, from time to time, request changes in the scope of the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the GOVERNMENT and the CONSULTANT, shall be incorporated in written amendments to this Agreement.

2.2 It is understood and agreed that the services under this Agreement will be financed 100% with Federal Highway (FHWA) Funds, allotted to the GOVERNMENT of the Virgin Islands of the United States, and that this Agreement, and any subsequent amendments will require the prior approval of FHWA. It is understood and agreed that the COMMISSIONER will process such requests for FHWA approval.



ARTICLE III – TERM

Unless otherwise directed by the COMMISSIONER, the work to be performed under this Agreement shall commence upon the CONSULTANT's receipt of a fully executed copy of this Agreement and shall be completed within twelve (12) months. Thereafter, this date may be extended by letter agreement between the COMMISSIONER and the CONSULTANT, however any extension by and in itself shall not change the maximum amount payable under this Agreement.

ARTICLE IV – SERVICES BY THE GOVERNMENT OF THE VIRGIN ISLANDS

The GOVERNMENT agrees to provide at no cost to the CONSULTANT the following:

- 1 - Access to GOVERNMENT and private property whenever such access is required.
- 2 - Access to and use of all existing and available reports, computations, survey data, and other information in the possession of the GOVERNMENT pertaining to this project.
- 3 - Historical Cost Data, if available, to assist in estimating probable costs for the various phases of construction.
- 4 - Existing Property Surveys, if available, of the design area.
- 5 - Written Notice of Acceptance of certain steps of various phases of services as herein specified.
- 6 - Coordination with Federal Highway Administration.
- 7- Services listed in Attachment No. 1 – Scope of Services, Part II – GOVERNMENT's Responsibility

ARTICLE V – COMPENSATION AND PAYMENTS

5.1 The GOVERNMENT agrees to pay the CONSULTANT compensation as detailed in Attachment 2, Compensation for Design Services, attached hereto and made a part hereof. Bills for fees and/or other compensation of expenses shall be submitted to the COMMISSIONER in detail sufficient for the proper pre-audit and post-audit thereof.

5.2 The CONSULTANT shall be compensated 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 as provided in Section 5.8 of this Article.



5.3 The following expressions shall mean:

a) Actual costs shall include the direct costs of the project which is the subject of this Agreement and clearly identified with it plus the indirect costs (Overhead) of the CONSULTANT, all of which are set forth in Attachment 2 attached hereto and made a part thereof.

b) Direct Costs shall include all payroll costs of employees of the CONSULTANT for time directly chargeable to the project which is the subject of this Agreement to be itemized as provided in Attachment 3a (Manhour Summary) attached hereto and made a part hereof, except that the payroll costs of principals' time shall be separately stated and all miscellaneous direct non-salary cost incurred in fulfilling the terms of this Agreement as set forth in Attachment 3b attached hereto and made a part hereof.

c) Payroll costs shall consist of the direct salaries of the principals and employees of the CONSULTANT for the actual time that they were engaged on the performance of the work described in this Agreement together with the amount payable for payroll expenses such as vacation, sick leave, holiday, payroll taxes and similar items directly related to the salaries. These costs are itemized as provided in Attachment 3c (Payroll Expenses) attached hereto and made a part hereof.

d) Indirect costs or overhead shall include all costs not directly attributable to this or any other project, but which are necessary for the proper functioning of the operation of the CONSULTANT. These costs are itemized as set forth in Attachment 3c (Overhead Costs) attached hereto and made a part hereof.

5.4 CONSULTANT shall bill for expenses by using receipts and not to exceed an agreed amount of \$30,000 and indirect costs or overhead shall be computed by multiplying the Direct Salary Cost by an agreed rate of 161.30%.

5.5 The CONSULTANT's fixed fee for the services required in this Agreement shall be \$51,698.14 as set forth on Line A of Attachment 2. Adjustments of the fixed fee for profit will not be allowed unless there is a change in scope, complexity, or character of services to be performed.

5.6 The estimated actual cost of the consultant professional services under this agreement is \$599,274.02 as set forth on the Line B of Attachment 2.

5.7 The estimated actual cost for subcontracted work under this Agreement shall be \$ 106,435.00 as set forth on the Line C of Attachment 2.

5.8 The maximum total compensation payable under this Agreement shall not exceed \$705,709.04 as set forth on the Line D of Attachment 2.

5.9 The CONSULTANT, shall submit to the COMMISSIONER each month: (1) a certified invoice for the Actual Costs for Professional Services and Special Subcontracted Services incurred during the invoice period in the performance of this Agreement; and (2) a statement of the amount of the Fixed Fee which was earned during the invoice period. Each month after the commencement of the services required hereunder, the CONSULTANT shall make a monthly request for payment, on a form approved by the COMMISSIONER for services performed during the preceding month. Each request for payment shall accompanied by a progress summary of the work performed in billing period. Each request for payment shall be filed at least thirty (30) days before the date payment is desired. Subject to the approval of the GOVERNOR and FHWA the CONSULTANT shall be entitled to payment for actual cost of professional services, subcontracted services and fixed fee les[s] ten percent of the fixed fee from each month and every monthly payment, upon submission of invoices with supporting documentations.

5.10 The balance due to the CONSULTANT shall be payable upon the expiration of 30 days after the work hereunder has been fully performed, provided the following have occurred:

- a) All approvals, including that of the COMMISSIONER, have been obtained wherever necessary.
- b) If ordered, the CONSULTANT shall have furnished to the GOVERNMENT (at the GOVERNMENT's expense), an audited statement of project costs and expenses, and indirect costs by an independent public accountant all in a form acceptable to the COMMISSIONER and such audit to be performed in accordance with the standards promulgated by the U.S. General Accounting Office (GAO), "Standards for Audit of Government Organizations, Programs, Activities, and Functions" also known as the "Yellow Book".

5.11 The CONSULTANT shall keep accurate records of account of the said project cost for a period of three (3) years from the date of final payment and shall, upon demand, make such records and invoices, receipts and other information pertaining to the services required hereunder, including CONSULTANT's general accounting records, available for inspection by the COMMISSIONER and FHWA. All records required to be kept by the CONSULTANT shall be maintained in accordance with generally acceptable accounting principles and in sufficient detail as to provide a sound basis for the auditing of same.

5.12 The CONSULTANT shall promptly notify the GOVERNMENT when seventy-five (75) percent of the maximum total compensation shown in Paragraph 5.8 has been expended.

ARTICLE VI – PERSONNEL AND MATERIALS

6.1 The CONSULTANT agrees not to engage on a full, part-time or other basis during the period of Agreement the services of persons who during the period of the Agreement are employed by the Government of the Virgin Islands of the United States or the U.S. Department of Transportation, except with the prior written consent of the COMMISSIONER.

6.2 The services required hereunder shall be performed by the CONSULTANT or under his supervision, and personnel engaged in the services shall be fully qualified. The CONSULTANT shall secure licenses or permits as required by the laws of the Government of the Virgin Islands of the United States to perform the services required hereunder. The licenses and permits shall include a United States Virgin Islands Business License and Professional Engineer's License, both in accordance with the applicable provisions of Title 3, Chapter 16, and Title 27 Virgin Islands Code and in compliance with provisions of 10 Virgin Islands Code Section 41 relating to the Civil Rights Act of the Virgin Islands. The CONSULTANT also will be required to apply for a Tax Filing and Payment Status Report-Licensing with the Virgin Islands Bureau of Internal Revenue pursuant to Section 101 of Act 5060, codified as Title 27, Section 304, Subchapter (j), Virgin Islands Code.

6.3 No person who is serving sentence in penal or correctional institution shall be employed or work under this Agreement.

6.4 Should the CONSULTANT buy equipment or related materials and charge the GOVERNMENT for them, said equipment or related materials shall become the property of the GOVERNMENT at the end of the contract. The COMMISSIONER's written approval shall be obtained prior to the purchase of any such equipment. In case of loss of any equipment or related materials borrowed from, or charged to, the GOVERNMENT, the CONSULTANT shall be fully responsible for said equipment or related materials. Its current market value shall be deducted from any invoice sent subsequently to the GOVERNMENT.

ARTICLE VII – DOCUMENTS

7.1 All final plans, documents, reports, studies, computations and other data prepared by the CONSULTANT will be at the endorsement of a person in the full employ of the CONSULTANT and duly registered in the United States Virgin Islands in the appropriate professional category.

7.2 After the COMMISSIONER's acceptance of the final plans and documents, the original set of CONSULTANT's drawings, tracings, plans and maps will be provided to the COMMISSIONER along with one record set of full size prints. The CONSULTANT shall signify, by affixing an endorsement (seal/signature, as appropriate) on every sheet of the record set, that the work shown on the endorsed sheets was produced by the CONSULTANT. With the tracings, and the record set of prints, the

CONSULTANT shall submit a final set of design computations. The computations shall be bound in an 8 1/2" x 11" format and shall be endorsed (seal/signature, as appropriate) by the CONSULTANT.

7.3 All reports, maps and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page (or in the same block): Name of the GOVERNMENT, name of the CONSULTANT; the fact that it was prepared "in cooperation with the United States Department of Transportation, Federal Highway Administration"; date the document was prepared; and the name of the area concerned.

7.4 All tracings, plans, specifications, field notes, maps, correspondence files and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the GOVERNMENT, who at its sole risk, may use same without restriction or limitation on their use; shall be made available upon request, to the COMMISSIONER at any time. The COMMISSIONER will have the right to visit the site for inspection of the work and the drawings of the CONSULTANT at any time. Unless changed by written agreement of the parties, said site shall be the Miami, Florida Office of Parsons Brinckerhoff.

7.5 During the performance of the services herein provided for, the CONSULTANT shall be responsible for any loss and damage to the documents herein enumerated, while they are in its possession, and any such loss or damage shall be replaced at no cost to the GOVERNMENT.

7.6 The CONSULTANT shall provide valuable papers insurance in an amount sufficient to assure the GOVERNMENT that all records, papers, maps, statistics, survey notes, design, and all other data at any time in the possession of the CONSULTANT will be re-established, recreated, or restored if made unavailable by fire, theft, or other cause.

7.7 No reports, maps, or other documents produced in whole or in part under this Agreement, shall be the subject of an application for copyright by or on behalf of the CONSULTANT without written consent of the COMMISSIONER and the FHWA.

#### ARTICLE VIII – DELAYS AND EXTENSIONS OF TIME

8.1 In the event there are delays on the part of the COMMISSIONER as to the approval of any of the materials submitted by the CONSULTANT or if there are delays occasioned by circumstances beyond the control of the CONSULTANT which delay the Project scheduled completion date, the COMMISSIONER shall grant to the CONSULTANT, by "Letter of Time Extension" an extension of the contract time, equal to the aforementioned delays, unless the "Letter of Time Extension" is mutually waived by the COMMISSIONER and the CONSULTANT.

8.2 It shall be the responsibility of the CONSULTANT to ensure at all times that sufficient contract time remains within which to complete services on the project. In

the event there have been delays which would affect the project completion date, the CONSULTANT shall submit a written request to the COMMISSIONER which identifies the reason(s) for the delay and the amount of time related to each reason. The COMMISSIONER will review the request and make determination as to granting the requested extension.

8.3 In the event contract time expires and the CONSULTANT has not requested, or if the COMMISSIONER has denied, an extension of the completion date, partial progress payments will be stopped on the date time expires. No further payment for the project will be made until a time extension is granted or all work has been completed and accepted by the GOVERNMENT.

#### ARTICLE IX – TERMINATION

9.1 If the CONSULTANT shall fail to fulfill in timely and proper manner his obligations under the covenants, agreements, or stipulations of this Agreement, the GOVERNMENT shall thereupon have the right to terminate this Agreement by giving written notice to the CONSULTANT of such five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the CONSULTANT under this Agreement shall become the property of the GOVERNMENT and same shall be delivered to the GOVERNMENT and the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such document. The CONSULTANT will be paid an amount equal to its allowable costs (subject to audit) up to the time of cancellation and a fixed fee based on the portion of the allowable costs incurred to the date of termination.

9.2 Notwithstanding the above, the CONSULTANT shall not be relieved of the liability to the GOVERNMENT for damages sustained by the GOVERNMENT by virtue of any breach of the Agreement by the CONSULTANT, and the GOVERNMENT may withhold any payments to the CONSULTANT until such time as the exact amount of damages due the GOVERNMENT from the CONSULTANT is determined.

#### ARTICLE X – RESPONSIBILITY FOR CLAIMS AND LIABILITIES

10.1 CONSULTANT agrees to investigate, defend and hold harmless the GOVERNMENT from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which GOVERNMENT may incur, sustain or be subjected to, arising out of services negligently performed by CONSULTANT and/or its Subcontractors under this Agreement; and arising from any cause, except the sole negligence of the GOVERNMENT..

10.2 The CONSULTANT's responsibilities shall be in accordance with the following provisions:

- a) The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any negligent errors or deficiencies in its designs, drawings, specifications, and other services.
- b) Neither the GOVERNMENT's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the GOVERNMENT in accordance with applicable law for all damages to the GOVERNMENT caused by the CONSULTANT's negligent performance of any of the services furnished under this contract.
- c) The rights and remedies of the GOVERNMENT provided for under this contract are in addition to any other rights and remedies provided by law.
- d) If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

10.3 The CONSULTANT shall submit evidence to the COMMISSIONER, upon execution of this Agreement, of the following:

- a) Comprehensive General and Auto Liability Insurance with Contractual Liability Endorsement which shall be in an amount not less than \$250,000.00 on account of one occurrence.
- b) Worker's Compensation Insurance covering all of CONSULTANT's employees as required by the laws of the U.S. Virgin Islands.
- c) Such insurance companies and the form of insurance must be satisfactory to the GOVERNMENT.
- d) Professional Errors and Omissions Insurance in an amount of not less than \$250,000.00 per claim and aggregate to be effective during the entire term of the Agreement. Contractor shall procure and maintain Professional Errors and Omissions insurance covering claims for negligent errors and omissions arising out of the performance of this Agreement. Contractor's Professional Errors and Omissions insurance shall have a retroactive date that coincides or predates this agreement. Contractor shall maintain continuous Professional Errors and Omissions coverage for the duration of this agreement and for three (3) years beyond project completion or termination of the Agreement. If the Contractor allows its Professional Errors and Omissions policy to expire without securing suitable replacement coverage with a retroactive date that coincides or predates

this agreement, Consultant shall purchase a three-year Extended Reporting Period allowing the reporting of claims until three (3) years beyond completion of services under this Agreement. This provision shall survive project completion or termination of the Agreement.

- e) Contractor must submit evidence of the appropriate extension rider to the underlying insurance that extends coverage to claims made after the policy lapses.

#### ARTICLE XI – COMPLIANCE WITH DESIGN CODES

The CONSULTANT shall comply with the design codes and standards which are more particularly described in Attachment No.1 attached hereto and all of the applicable codes of the U.S. Virgin Islands. Design standards shall include the

- AASHTO “A Policy on Geometric Design of Highways and Streets” – 2004 or latest edition
- FHWA “Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects (FP-03)” and supplemental specifications,
- AASHTO “Roadside Design Guide”, 3<sup>rd</sup> Edition
- FHWA “Manual on Uniform Traffic Control Devices (MUTCD)”, 2003 or latest edition
- 23 Code of Federal Regulations, “Highways.” Codes shall include Title 23 U.S.C. “Compilation of Selected Surface Transportation Laws” and Chapter 21, Title 31 of U.S. Virgin Islands Code.

#### ARTICLE XII – SUBCONTRACTS, ASSIGNMENTS OR TRANSFER

12.1 The CONSULTANT represents that he has, or will secure all personnel required in performing the services under this Agreement. Such personnel shall not be employees or have any contractual relationship with the GOVERNMENT or FHWA, except with prior written consent of the COMMISSIONER. The services required hereunder will be performed by the CONSULTANT or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under U.S. Virgin Islands law to perform such services.

12.2 CONSULTANT’s work shall be performed and/or directed by the key personnel identified in the technical/fee proposal presentations by the CONSULTANT. Any changes in the indicated personnel, their rates, or the CONSULTANT’s officer in charge of the work as identified in the CONSULTANT’s proposal shall be subject to review and approval by the COMMISSIONER.

12.3 Due to the nature and scope of the required services, it may be desirable for the CONSULTANT to sub-contract portions of the work. The CONSULTANT shall be authorized to subcontract these services under the provisions of this document. The

*hm*

sub-contracting firms must be approved in writing and pre-qualified by the COMMISSIONER prior to initiation of any work.

12.4 The CONSULTANT shall not assign any interest in the Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Government and FHWA

12.5 It is agreed by parties hereto that the provisions of the Federal Laws providing for Suspension and Debarment of Contractors as stated in section 14.1 herein,, 49CFR Part 29, including the certifications shown on Attachment No. 5, attached hereto and made a part hereof, shall apply to this Agreement.

### ARTICLE XIII – MISCELLANEOUS

13.1 The word “Commissioner” as used herein shall mean the Commissioner of the Department of Property and Procurement of the Government of the U.S. Virgin Islands.

13.2 The Commissioner of Property and Procurement has and by these presents does hereby appoint the Commissioner of Public Works his/her designee.

13.3 CONSULTANT covenants that he 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 in this Agreement. There exists no conflict of interest in the execution of this Agreement pursuant to Chapter 37 of Title 3 of the U.S. Virgin Islands Code.

13.4 Words of gender used in this Agreement shall be held to include the plural and vice versa unless the context otherwise is required.

13.5 This Agreement contains all of the agreement and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successor in interest.

13.6 During the performance of this contract, the CONSULTANT agrees as follows:

a) The CONSULTANT will not discriminate against any employee or application for employment because of race, creed, color, sex or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GOVERNMENT setting forth the provisions of this nondiscrimination clause.



b) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

c) The CONSULTANT will cause the forgoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon such subcontractor, provided that the forgoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13.7 No member of or Delegate to the Congress of the United States, and no Resident COMMISSIONER, shall be admitted to any share or part of this Agreement or to any benefit to arise here from.

13.8 The laws of the U.S. Virgin Islands shall govern the validity, performance and enforcement of this Agreement.

13.9 All rights and remedies of the GOVERNMENT here enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by the GOVERNMENT of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

13.10 All of the terms, provisions, covenants, and conditions of this Agreement shall insure to the benefit of and be binding upon the GOVERNMENT and CONSULTANT and their successors, assigns, legal representatives, heirs, executors and administrators.

13.11 The CONSULTANT warrants that he has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any company, individual, or consultant any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

13.12 The following Disadvantaged Business Enterprise policies shall apply:

a) It is the policy of the United States Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 23 (Amended) shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 23 (Amended) apply to this Agreement.

b) The GOVERNMENT and its CONSULTANT agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 (Amended) have the maximum opportunity to participate in the performance of Agreements and any subagreements financed in whole or

in part with Federal funds. In this regard, the GOVERNMENT and its CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 (Amended) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform work specified in the Agreement. The GOVERNMENT and its CONSULTANTS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT - assisted agreements.

c) The CONSULTANT is hereby advised that failure of the CONSULTANT, or any Subconsultant performing work under this Agreement, to carry out the requirements set forth in Paragraph a) and b) above shall constitute a breach of agreement and, after the notification of the GOVERNMENT may result in termination of the Agreement by the GOVERNMENT or such remedy as the GOVERNMENT deems appropriate.

13.13 If the amount of the Agreement or subcontract thereunder exceeds \$100,000.00, the CONSULTANT or subconsultant shall comply with applicable standards, order, or requirements issued under Section 306 of Federal Clean Air Act (43 U.S.C. 1857(h) ), Section 508 of the Federal Clean Water Act (33 U.S.C. 1368), Executive Order 11738. and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The CONSULTANT or subconsultant shall report violations to the FHWA and to the U.S. Environmental Protection Agency Assistant Administrator for Enforcement (EN-329).

13.14 This Agreement is executed in three (3) counterparts each of which shall be deemed an original.

13.15 This Agreement shall be subject to the availability of funds and to the approval of the Governor of the United States Virgin Islands.

#### ARTICLE XIV - OTHER ITEMS

##### 14.1 Debarment Certification

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated fund, 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 subcontracts with the current "**LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT**". In event the contractor or sub-contractor misrepresents its eligibility to receive contract awards using federal funds, the contractor or sub-contractor agrees that it shall not be entitled to payment for any work performed under this contract or sub-contract and that the contract or sub-contractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made. If during the term of this contract, the contractor shall be terminated

forthwith for cause and the contractor shall not be entitled to payment for any work performed under this contract or sub-contract after effective date of such ineligibility.

- (a) Jurisdiction with respect to all disputes and issues arising under or relating to the Contract shall be exclusively in the courts of the U.S. Virgin Islands.
- (b) In the event of a conflict between the terms and conditions of the general provisions of this Contract as set out in Articles 1 through 14 of this Contract, and the terms and provisions of any Attachments to this Contract, the terms and conditions of said general provisions of the Contract shall prevail.

14.2 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.

14.3 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.

14.4 Any notice required to be given 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

Lynn A. Millin-Maduro, Esq.  
Commissioner  
Department of Property & Procurement  
Sub Base, Building No. 1, 3<sup>rd</sup> Floor  
St. Thomas, U.S.V.I. 00802

Darryl A. Smalls, P.E.  
Commissioner  
Department of Public Works  
8244 Sub Base  
St. Thomas, U.S.V.I. 00802-5805

CONSULTANT

Jorge Maspons, Vice President  
PB Americas, Inc.  
7300 Corporate Center Drive, Suite 600  
Miami, Florida 33126

*M*

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

WITNESSES:

Luis Mill  
Tiffany George

Government of the Virgin Islands  
Dept. of Property & Procurement

BY: Lynn A. Millin-Maduro  
Lynn A. Millin-Maduro, Esq.  
Commissioner

Darryl A. Smalls

Government of the Virgin Islands  
Dept. of Public Works

BY: Darryl A. Smalls  
Darryl A. Smalls, P.E.  
Commissioner

Jorge Maspons  
Parsons Brinckerhoff

Parsons Brinckerhoff, Inc.  
BY: Jorge Maspons  
Jorge Maspons  
Vice President  
Parsons Brinckerhoff, Inc.  
7300 Corporate Center Drive, Ste 600  
Miami, Florida 33126

Dept. of Justice By: Robert J. Jones 5/22/12  
APPROVED:

John P. deJongh, Jr.  
Governor

5/28/12  
Date