

## CONTRACT FOR PROFESSIONAL SERVICES

**THIS CONTRACT** (the "Contract") is made this \_\_\_\_ day of April, 2018, 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 Education** (hereinafter referred to as "Government") of 1834 Kongens Gade, St. Thomas, U.S Virgin Islands 00840 and **AECOM Caribe, LLP** (hereinafter referred to as "Contractor" or "AECOM") of 72 Kronprindsens Gade, Suite A, St. Thomas, U. S. Virgin Islands 00802. The Government and Contractor are each a "Party" and are collectively the "Parties" to this Contract.

### WITNESSETH:

**WHEREAS**, the Government is in need of a Contractor with expertise in all phases of work associated with the design, manufacture, construction, site preparation, transportation and installation of turn-key New Temporary Educational Facilities to be used for instructional, administrative, and auxiliary services in the Territory for the upcoming 2018-2019 School Year; and

**WHEREAS**, the services were solicited by the Department of Property and Procurement under Request for Proposal ("RFP") No. 005-2018 (P) for qualified vendors in Temporary Educational Facilities with the knowledge, experience, and expertise to provide all things necessary to provide a full service turnkey product on all three islands within the U.S. Virgin Islands; and

**WHEREAS**, the Contractor submitted a proposal in response to the RFP (the "Proposal") and was recommended by the Government's Evaluation Committee and approved by the Commissioner of Property and Procurement to provide the services particularly described in Addendum I (Scope of Work) attached hereto and made a part of this Contract; and

**WHEREAS**, the Contractor represents that it is willing and capable of performing the Services and that it has complied with all applicable local and federal laws, rules, and regulations, as they apply to the implementation of this Contract.

**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

1.1. The Contractor will provide the services described in Addendum I (Scope of Work) and its Attachment A (Basis of Design) and Attachment B (Basis of Estimate), which are attached hereto and made a part of this Contract (the "Services"). In the event of any inconsistencies in the initial scope of work described in the body of Addendum I

and the initial Attachment A (Basis of Design) and Attachment B (Basis of Estimate), the scope of work in Addendum I controls.

1.2 The Services include the architectural, engineering, construction and installation of temporary classrooms and structures at up to 16 schools & other designated sites (each, a "Site" and collectively the "Sites") in 2 school districts on 3 islands in the U.S. Virgin Islands (hereinafter referred to as the "Project"). The temporary classrooms will be provided in the form of pre-manufactured modular buildings that will be factory constructed and delivered and installed on the Sites approved by the Government and the Federal Emergency Management Agency ("FEMA").

1.3 The Services, the Contract Sum, and the Contract Time are all based on Government's criteria set forth in the RFP, and on the assumptions and details contained in Contractor's Proposal and specifically the initial Basis of Design, Basis of Estimate, and cost breakdown submitted with the Proposal. However, the Parties anticipate that the scope of the Services, including the proposed site plans, layouts, quantities, building selections, space planning, programming, and other details in the initial Basis of Design and Basis of Estimate will change, evolve, and be refined during the Pre-Design Services Phase, Space Planning, Programing, & Schematic Design Phase, and Design Development Phase (collectively, the "Design Phase"). In recognition of this design development process, prior to commencing with the construction services, Contractor shall be entitled to a Change Order that will include adjustments to the portion of the Contract Sum applicable to the construction services only. The Parties shall, in good faith, negotiate such Change Order and agree that the adjustments to the Contract Sum shall correspond with, and be evaluated based upon a comparison of: (a) the initial Basis of Design, Basis of Estimate, and cost proposal attached to this Contract; to (b) Contractor's updated Basis of Design, Basis of Estimate, and cost proposal, relied upon to prepare the final approved Design Development Documents.

1.4 The Parties further agree that Contractor shall be entitled to Change Orders during the construction phases of the Project if there are any requested or required changes in the Services that increase the cost or time to perform the Services. Corresponding adjustments in the Contract Sum and Contract Time will be negotiated and approved by the Parties in accordance with the procedures set forth in Paragraph 35 (Change Orders) of this Contract, and shall be substantiated based on an evaluation of Contractor's updated Basis of Design and Basis of Estimate.

1.5 Without limiting the general provisions set forth above, the Parties specifically acknowledge that Contractor's Basis of Design and Basis of Estimate include an allowance (including overhead (G&A) and profit ) for certain items applicable to the Services that equate to the sum of \$22,439,156 (the "Allowance Value"). The Parties expressly agree that should the Allowance Value be underrun or exceeded as evaluated during the Design Phase due to scope changes, changes in pricing assumptions, or otherwise, then Contractor shall be entitled to submit a Change Order, subject to the Government's approval, adjusting the Contract Sum in accordance with the procedures

set forth in Paragraph 35 (Change Orders), and shall be substantiated based on an evaluation of Contractor's updated Basis of Design and Basis of Estimate.

## 2. TERM

2.1 This Contract shall commence immediately upon the execution of this Contract by the Governor of the Virgin Islands (the "Commencement Date") and shall terminate on September 28, 2018 (Final Completion Date), or upon the Contractor obtaining full compliance of the terms of this Contract, whichever occurs earlier. Contractor shall obtain Substantial Completion of the Services on or before August 28, 2018, subject to adjustments in the Contract Time approved by the Government (the "Substantial Completion Date").

2.2 The "Contract Time" is defined as the period of time starting on the Commencement Date and ending on the Final Completion Date, subject to adjustments approved by the Government.

2.3 "Substantial Completion" is defined as the stage of each Site whereby the Government deems the conditions and progress satisfactory to occupy the premises and use all structures for its intended purpose. Furthermore, activities past Substantial Completion required by the Contractor to bring the project to a 100% completion stage (i.e., the "Punch List" stage) will not interfere with the Government's use of the property. Specific to each Site, the Parties stipulate that no work may be conducted during the Punch List stage anywhere within a Site while students are present. The Government will allow work outside of school hours and on weekends on a Site-by-Site basis. A Certificate of Substantial Completion for each Site will be delivered to the Contractor by the Government at the stage of Substantial Completion. Occupancy and use of a Site by the Government does not constitute acceptance of the Services at that Site nor relieve the Contractor from completing all items on the punch list to bring the project to a 100% completion state; however, the Government will accept risk of loss upon Substantial Completion of a Site.

## 3. COMPENSATION

The Government, in consideration of the satisfactory performance of the Services described in Addendum I (Scope of Work), agrees to pay the sum not to exceed **ONE HUNDRED SEVENTEEN MILLION, NINE HUNDRED FORTY-ONE THOUSAND, TWO HUNDRED FOUR DOLLARS AND NO CENTS (\$117,941,204.00)** (the "Contract Sum") in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this Contract, and subject to any and all applicable approved Change Orders, including those referenced in Paragraphs 1.3, 1.4, and 1.5.

## 4. 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 Not Applicable (N/A).

## 5. RECORDS

The Contractor when applicable, 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 consultants doing business in the United States Virgin Islands.

## 7. DOCUMENTS, PRINTOUTS, ETC.

7.1 All deliverables required to be provided by Contractor under 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.

7.2 This Contract is subject to, and incorporates by reference, 45 CFR 75.322 governing rights to intangible property. Intangible property includes but is not limited to: computer software; patents, inventions, formulae, processes, designs, patterns, trade secrets, or know-how; copyrights and literary, musical, or artistic compositions; trademarks, trade names, or brand names; franchises, licenses, or contracts; methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and other similar items. The Contractor may copyright any work that is subject to copyright and was developed, or for which ownership was purchased under this Contract. The Contractor must deliver all intangible property, including but not limited to intellectual property, to the Government in a manner that ensures a limited royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use such intangible property exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project. The Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the U.S. Department of Commerce at 37 CFR Part 401.

7.3 In addition, and notwithstanding the foregoing or anything to the contrary set forth herein, Contractor will retain all common law, statutory, and other reserved rights, including copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Contractor before the commencement of, or developed or acquired by Contractor during or after, the

performance of the Services and the foregoing shall not be deemed Services and Contractor shall not be restricted in any way with respect thereto.

## **8. 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, 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.

## **9. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the Services under this Contract without the prior written consent of the Government.

## **10. INDEMNIFICATION**

Contractor agrees to indemnify defend and hold harmless Government from and against any and all third party claims for bodily injury and property damage, including any loss, damage, liability, cost, charges and expense (including attorney's fees) which the Government may incur, sustain or be subjected to, as a result of such third party claims, but only to the extent such loss, damage, liability, cost, charge, or expense, arises out of Contractor's negligent acts or omissions, or the negligent performance of the Services to be performed by Contractor (or any of its contractors, subcontractors, architects, consultants, or others under its control) under this Contract.

## **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; DISPUTE RESOLUTION**

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

12.2 The Parties are committed to working cooperatively to ensure a successful Project. In the event a dispute arises under the Contract, the Parties' agree to comply with the following dispute resolution procedures:

(a) First, in the event of a dispute, either Party may initiate these dispute resolution procedures by submitting a written notice of dispute to the

other Party (the "Dispute Notice"). The Dispute Notice shall briefly summarize the nature of the dispute and such Party's claims and factual and legal positions, including a breakdown of the claims and the estimated amount of any monetary damages sought for each claim. After the issuance of the Dispute Notice, the Parties shall attempt to resolve the dispute amicably through good faith informal discussions and negotiations between the Parties' respective authorized representatives. Such meeting shall be scheduled within fifteen (15) days after issuance of the Dispute Notice. At least three days prior to the scheduled date for the meeting, the Party that received the Dispute Notice shall provide the issuing Party with a written response to the Dispute Notice briefly describing such Party's responses, defenses, and counterclaims (if any), including a breakdown of the counterclaims and the estimated amount of any monetary damages sought in connection with each counterclaim.

(b) If the good faith discussions and negotiations required in Paragraph 12.2(a) are not successful, then any remaining disputes shall be referred to non-binding mediation as a condition precedent to commencing binding dispute resolution pursuant to Paragraph 12.2(c). The mediation shall be held in the US Virgin Islands or other mutually agreed upon and convenient location. The Parties shall mutually select a mediator, who shall be a qualified attorney or former judge with experience mediating construction disputes for similar projects. The parties shall split the cost of mediation equally.

(c) If the mediation as required in Paragraph 12.2(b) does not result in a settlement of the claims, the Parties' authorized representatives may opt to reengage in good faith discussions and evaluations regarding all potential options for binding dispute resolution, including arbitration, litigation, and any other alternatives. The Parties shall endeavor to select the most appropriate form of binding dispute resolution based on an evaluation of the nature of the claims, the amount in controversy, the time and cost associated with each form of dispute resolution, and the Parties' respective interests. The discussions shall take place within fifteen (15) days of the completion of the mediation referenced in Paragraph 12.2(b). In the event the Parties are unable to mutually agree on the form of binding dispute resolution, either Party may commence litigation in the US Virgin Islands as the default form of binding dispute resolution.

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

#### **15. RIGHT TO WITHHOLD**

15.1 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 the Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Prior to exercising Government's right to withhold under this paragraph, Government will notify Contractor in writing at least five (5) days prior to the date payment is due. Such written notice shall indicate the specific amounts the Government intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to correct the issue.

15.2 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. Notwithstanding any withholding right, the Government shall pay Contractor all undisputed amounts within the times required in Addendum II.

#### **16. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor. The Government expressly represents and warrants that at the time of execution of this Contract, sufficient funds have been appropriated to pay the Contract Sum.

#### **17. TERMINATION FOR CONVENIENCE; SUSPENSION**

17.1 The Government will have the right to terminate this Contract in whole or in part, without cause on Thirty [30] days written notice to the Contractor specifying the date of termination. If Government terminates this Contract for convenience and without cause, Contractor shall be compensated for Services performed prior to termination, plus any other expenses attributable to termination, including but not limited to demobilization costs, early-termination and/or cancellation fees applicable to executed subcontracts and purchase orders, and other costs allowable in accordance with the provisions of Addendum V (Post-Termination Provisions) attached hereto and made a part hereof. In the event the Parties are unable to agree on the amount payable to Contractor upon Government's termination for convenience, the amount payable shall be determined in

accordance with the provisions of Addendum V (Post-Termination Provisions), subsection (d).

17.2 If the Government fails to make payments to the Contractor in accordance with this Contract and Addendum II, such failure shall be considered substantial nonperformance and cause for termination or, at the Contractor's option, cause for suspension of performance of the Services. If Contractor elects to suspend the Services, the Contractor shall give seven days' written notice to the Government before suspending the Services. In the event of a suspension of the Services, the Contractor shall have no liability to the Government for delay or damage caused by the suspension of the Services. Before resuming the Services, the Contractor shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Services. The Contract Sum and Contract Time shall thereafter be equitably adjusted through a Change Order.

17.3 If the Government suspends the Project, the Contractor shall be compensated for the Services performed prior to notice of such suspension. When the Project is resumed, the Contractor shall be compensated for expenses incurred in the interruption and resumption of the Contractor's Services. The Contract Sum and Contract Time shall thereafter be equitably adjusted, provided the suspension was through no fault of the Contractor.

17.4 If the Government suspends the Project for more than 45 cumulative days for reasons other than the fault of the Contractor, the Contractor may terminate this Contract by giving not less than seven days' written notice.

## 18. PARTIAL TERMINATION

The performance of the Services under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable. 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, plus any additional expenses actually incurred as a result of such partial termination.

## 19. 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.



**20. CONFLICT OF INTEREST**

20.1 The 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.

20.2 The Contractor further covenants that it is:

(a) 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

- (b) 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.

**21. EFFECTIVE DATE**

The effective date of this Contract shall be the day of execution of the Contract by the Governor of the U. S. Virgin Islands

**22. 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  
Sub Base, Building No. 1, Third Floor  
St. Thomas, VI 00802

Sharon Ann McCollum, Ph.D.,  
Commissioner  
Department of Education  
1834 Kongens Gade  
St. Thomas, U.S. Virgin Islands 00802

**CONTRACTOR**

Paul Cocotis and Steven Richards  
Authorized Representative(s)  
AECOM Caribe, LLP  
6200 South Quebec Street  
Greenwood Village, CO 80111

**23. LICENSURE**

The Contractor covenants that it has:

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

**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 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**

The 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 claims to be false, fictitious or fraudulent. The Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

**26. NOTICE OF FEDERAL FUNDING**

The Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. The 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. The Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

## 27. LIABILITY INSURANCE

27.1 The Contractor shall provide the Government with proof of Commercial General Liability Insurance coverage and Professional Liability coverage for the entire period of this Contract. The Contractor shall be insured under each policy in an amount of not less than **ONE MILLION DOLLARS AND ZERO CENTS (\$1,000,000.00)** for each occurrence. In the event that the Contractor's existing coverage will expire before the end of the term of this Contract, the Contractor shall provide proof of the renewal of coverage within ten (10) days after beginning of the new period of the insurance. The policies shall be maintained with insurer(s) and in a form satisfactory to the Government, and the Contractor shall submit a Certificate of Liability Insurance and Declaration/Endorsement pages naming the Government as an additional insured and certificate holder on the Commercial General Liability Policy.

27.2 **WORKERS' COMPENSATION:** Contractor shall supply proof of current coverage under the Government Insurance Fund as required under 24 V.I.C. § 272.

27.3 Contractor will obtain property insurance written on a builder's risk "all-risk" or other acceptable policy form for the replacement value of direct physical loss or damage of the project values except for Catastrophic perils such as Earthquake, Flood, and Hurricane, which would be limited in the amount of Ten Million Dollars (USD \$10,000,000) in the annual aggregate. The Government and its architect, consultants, contractors, and subcontractors shall be named as additional insureds on such builder's risk policy. The property insurance shall be maintained through the term of this Contract. The builders risk policy shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Contractor's services and expenses required as a result of such insured loss. The deductibles shall not exceed \$100,000 except for Catastrophic perils such as Earthquake, Flood, and Hurricane, which should be subject to a 5% of the total property value in place at the time of loss subject to a minimum of \$250,000 per event, and the Government shall pay costs not covered because of such deductibles. This insurance shall cover portions of the work stored off the site, and also portions of the work in transit. The Parties acknowledge and agree that: (a) risk of loss for property damage including damages to the work shall pass to the Government upon Substantial Completion of each Site; (b) Contractor's liability for damages and losses resulting from an insurable event under this builder's risk policy shall be limited to proceeds payable from such policy; (c) Contractor shall pay the premium and other costs to procure and maintain the policy; (d) Contractor shall be entitled to reimbursement via a Change Order for any deductibles paid; and (e) Government and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, for causes of loss to the extent covered by proceeds from such builder's risk policy, except such rights as they have to proceeds of such insurance.

## **28. BILLING PROCEDURES and PAYMENT**

28.1 The Government, in consideration of the satisfactory performance of the Services described in Addendum I (Scope of Work), agrees to make progress payments based on the invoices submitted by the Contractor. The Government will pay the Contractor upon receipt of properly completed invoices that shall describe and document to the Government's satisfaction, and shall contain information, including but not limited to, the period of services covered by the invoice, description of the services performed, and the amount of fees in accordance with the compensation schedule in ADDENDUM II (Compensation) attached hereto and made a part of this Contract. Each invoice must be accompanied by applicable supporting documents, including but not limited to any reports/results due for the applicable invoice period.

28.2 Final payment applicable to each Site shall be invoiced upon full completion of each Site and upon inspection and acceptance of the Site by the Government. Contractor shall, with its final invoice for each Site, submit all pertinent warranties, appropriate and mutually agreed upon Release of Claims, and Waiver of Liens forms. Contractor shall also submit Consent of Surety before final payment and, upon the Government's request, any other documentation the Government deems necessary.

28.3 Payment shall be considered timely if made by the Government within Thirty (30) days after receipt of properly completed invoices, and verification by the Government that the services invoiced were provided in accordance with the Contract and all applicable federal and local laws and regulations, including all applicable policies, rules, and procedures pertaining to this Contract or the services provided hereunder. Payment shall be sent to the address designated by the Contractor. The Government may, at its sole discretion, withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract. All Payments are subject to a Ten Percent (10%) Retainage.

28.4 Title to all equipment, materials, and work passes to the Government upon delivery to the Sites and receipt of payment.

## **29. DELAYS; FORCE MAJEURE**

29.1 Neither Party shall be liable to the other for any delays or failure to perform under this Contract, as a result of conditions reasonably beyond the Party's control including but not limited to war, terrorist acts, riot, strikes, fire, earthquakes, hurricanes, floods, or any act of God, discovery or uncovering of hazardous or toxic materials or historical artifacts at the Project sites, unusually severe weather, acts of terrorism, sabotage, embargo, energy shortage, wreck or delay in transportation, accidents in the handling and rigging of heavy equipment, explosion, riot, war, court injunction or order, delays by or acts or orders of any governmental body or changes in

laws or government regulations, acts or omissions of the other Party or its other contractors, consultants, or representatives.

29.2. If Contractor is delayed at any time in the commencement or progress of the Services by an act or neglect of the Government, FEMA, or by a consultant, representative, or separate contractor employed by the Government, including but not limited to: (a) Government's failure to timely perform its obligations in Paragraph 34; or (b) FEMA's failure to timely review and approve any submittals or design documents related to the Sites; or (c) changes ordered in the Services by the Government; or (d) any force majeure event listed in Paragraph 29.1; then the Contract Time shall be extended by Change Order for a period of time reasonably necessary to overcome the effect of the delay, and the Contract Sum shall be increased for the additional costs (if any) arising from such delay.

### **30. DEFAULT AND FAILURE TO PERFORM**

30.1 The Government may terminate the Contract, in whole or in part, for default in the event of any material failure or refusal of the Contractor to perform its obligations under this Contract. Upon the occurrence of an event of default, the Government shall provide Contractor written notice describing the factual and contractual bases of the default and providing Contractor an opportunity to cure, or complete a cure within 7-days of such notice. If Contractor fails to cure, or fails to reasonably commence to cure the default within such 7-day period, Government may provide notice of termination of the Contract by providing Contractor with ten (10) days written notice.

30.2 Upon termination for Contractor's default, the Parties agree that the provisions of 31 V.I.R. & Regs. § 242-88 shall apply with respect to the costs, charges, and damages recoverable by Government, and/or payable to Contractor. Upon such termination for default, whether in whole or in part, Contractor shall be entitled to receive payment for Services performed through the date of termination. In addition, the post-termination procedures set forth in Addendum V, section (a) shall apply.

30.3 If Government fails to pay amounts when due (and does not provide notice of any withholding pursuant to this Contract), or has repeatedly failed to fulfill the Government's obligations under the Contract, the Contractor shall provide Government written notice of the default and providing Government an opportunity to cure within 7-days of such notice. If Government fails to cure, or fails to reasonably commence to cure the default within such 7-day period, Contractor may provide notice of termination of the Contract by providing Government with ten (10) days written notice.

### **31. SEVERABILITY**

If any of the provisions of this Contract are determined to be invalid, such invalidity shall not affect or impair the validity of the other provisions, which shall be considered severable and shall remain in full force and effect.

## 32. OTHER PROVISIONS

The "Contract Documents" include this Contract, any amendments and executed Change Orders, the Addendum I (Scope of Work), including its Addendum II (Compensation), Addendum III (Other Terms and Conditions), Addendum IV (General Provisions), Addendum V (Post-Termination Provisions), Attachment A (Basis of Design), Attachment B (Basis of Estimate), and the Contractor's eligibility documents. The Contract Documents are attached hereto, made a part of this Contract and are incorporated herein by reference.

## 33. CONCEALED OR UNKNOWN CONDITIONS

33.1 If the Contractor encounters conditions at any of the sites that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Government before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Government shall promptly investigate such conditions and, if the Government determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Services, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Government determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Government shall promptly notify the Contractor in writing, stating the reasons.

33.2 If, in the course of the Services, the Contractor encounters human remains, or recognizes the existence of burial markers, religious sites, archaeological sites, or wetlands, not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall immediately notify the Government. Upon receipt of such notice, the Government shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Government but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Paragraph 35.

33.3 The Government acknowledges and agrees that, prior to commencing the Services, Contractor has not created or contributed to the creation or existence of any air, subsurface, ground, or other environment hazards, contamination, or pollution, or the presence of hazardous, toxic, or contaminated substances and materials, (collectively, the "Pre-Existing Conditions"). Contractor assumes no title, ownership of, or liability or responsibility under this Contract for the creation, existence, or presence of any Pre-Existing Conditions. To the extent Contractor incurs any losses, damages, costs, penalties, fines, and expenses, including reasonable attorneys' fees, of any kind or character arising

from or relating to Pre-Existing Conditions (collectively "Environmental Losses"), Contractor shall be entitled to a Change Order increasing the Contract Sum by the amount of such Environmental Losses in accordance with Paragraph 35

33.4 The Government further represents that it shall immediately notify Contractor of any information, data, or documents in the possession of or reasonably known to the Government relating to subsurface conditions affecting any Site. The Government further agrees to advise Contractor prior to the commencement of Services of the existence of dust, fumes, gas, noise, vibrations, or other particulate or known particulate matter at or near a Site that may create or contribute to a potential health hazard or nuisance to persons working within the area and the existence and identity of any known or suspected hazardous or toxic substances, waste, or other hazards or hazardous conditions that may pose a threat to human health, safety, or the environment if reasonably known to the Government. If the foregoing conditions are encountered during the course of Contractor's Services, the Government agrees that the Contract Sum, Contract Time, and/or any other appropriate terms and conditions of the Contract may be equitably adjusted in accordance with a mutually agreed upon, written Change Order.

### **34. GOVERNMENT REQUIREMENTS**

34.1 The Government shall promptly obtain easements, zoning variances, and legal authorizations including FEMA approvals or entitlements regarding site utilization where essential to the execution of the Project.

34.2 The Government shall cooperate with the Contractor in securing building and other permits, licenses and inspections. Local permitting fees for Building and Earth Change will be waived.

34.3 The Government shall review and approve or take other appropriate action on submittals and any other design/construction documents and deliverables that require Government review and/or approval within the durations and deadlines set forth in the schedules in the Addendum I. Government shall also schedule and conduct all reviews, inspections, and tests required to obtain certificates of occupancy at the sites and/or any equivalent certifications from any third party and/or governmental entities with jurisdiction, within the durations and deadlines set forth in the Addendum I. If Government does not perform its obligations in this Paragraph 34.3 by the deadlines set forth in the Addendum I. Contractor may be entitled to an extension of the Contract Time for such delays, occasioned by the Government's actions and may also be entitled to an increase in the Contract Sum to the extent such delays result in increased costs to perform the Services. The Government's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Government, of any construction means, methods, techniques, sequences or procedures. The Government approval of a specific item shall not indicate approval of an assembly of which the item is a component.

### 35. CHANGES IN THE SERVICES

35.1 Changes in the Construction Services may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order subject to the limitations stated in this Contract and this Paragraph 35.

35.2 A Change Order is a written instrument signed by the Government and Contractor stating their agreement upon the change in the Services, and the amount of the adjustment, if any, in the Contract Sum and Contract Time. Contractor shall have no obligation to proceed with changed work or services without an executed Change Order.

35.3. The adjustment to the Contract Sum and Contract Time shall, when applicable, be evaluated under and based upon Contractor's Basis of Design and Basis of Estimate, and such adjustment shall be calculated on one of the following methods:

- (a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) Unit prices stated in the Contract Documents or subsequently agreed upon; or
- (c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

35.4 If the Parties are unable to agree on the method for adjustment to the Contract Sum or Contract Time, the Government shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Services attributable to the change, including, in case of an increase or decrease, an amount for overhead and profit in the percentages set forth in the Basis of Estimate. In such case, Contractor shall keep and present, in such form as the Government may prescribe, an itemized accounting together with appropriate supporting data.

35.5 Unless otherwise provided in the Contract Documents, costs for the purposes of subparagraph 35.4 shall be limited to the following: Additional costs or reduction of costs of construction services; Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed; Rental costs of machinery and equipment, exclusive of hand tools; unforeseen work and additional costs of supervision, labor, and field office personnel directly attributable to the change.

### 36. CONTRACTOR'S WARRANTY

36.1 The Contractor warrants to the Government that, for a period beginning on the date Contractor commences the Services and terminating one year from acceptance of the final product, materials and equipment furnished by Contractor and all subcontractors under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that, for a period beginning on the date Contractor commences work and terminating one year from the date of Substantial Completion of all applicable Site, the Services will conform to the



requirements of the Contract Documents. Services, work, materials, or equipment not conforming to these requirements may be considered "Defective Work." The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Government, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

36.2 Upon written notice from the Government of Defective Work, the Contractor shall either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Defective Work has been rejected by the Government, remove it from the applicable Site(s) and replace it with conforming work. The Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby, and shall hold the Government harmless for same.

36.3 Should the Government determine, at its sole discretion, it is in its best interest to accept Defective Work, the Government may do so. Contractor shall bear all direct, indirect and consequential costs attributable to the Government's evaluation of and determination to accept defective Work. If such determination is rendered prior to final payment, a Change Order shall be executed evidencing such acceptance of such Defective Work, incorporating the necessary revisions in the Contract Documents and, if appropriate and justified, reflecting an appropriate decrease in the Contract Amount. If the Government accepts such Defective Work after final payment, the Parties shall negotiate in good faith in an attempt to agree upon an appropriate amount to adequately compensate the Government for its acceptance of the Defective Work.

### **37. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.**

Notwithstanding any provision to the contrary in this Contract or other Contract Documents, the Contractor and Government waive all claims against each other, and shall have no liability, for consequential, indirect, incidental, punitive, or exemplary damages of any kind or nature whatsoever arising out of or relating to this Contract. This mutual waiver includes but is not limited to:

- (a) damages incurred by the Government for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- (b) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Services.

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

WITNESSES:

[Signature]

GOVERNMENT OF THE VIRGIN ISLANDS

Sharon Ann McCollum April 17, 2018  
Sharon Ann McCollum, Ph.D. Date  
Commissioner  
Department of Education

[Signature]

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

4/20/18  
Date

[Signature]

CONTRACTOR

Steven E. Richards 4/14/18  
Steven Richards Date  
Authorized Representative  
AECOM Caribe, LLP  
(Corporate seal, if the Contractor is a corporation)

APPROVED:

[Signature]  
Kenneth E. Mapp  
GOVERNOR OF THE VIRGIN ISLANDS

Date: 04-23-19

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY: [Signature] Date 4/24/18  
AAG

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PURCHASE ORDER NO.

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Contract No.  
Contractor's Initials SR