

## CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made as of the <sup>28<sup>th</sup></sup> day of <sup>June</sup>, 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 Public Works** hereinafter referred to as "Government") and **NXG Testing and Consultants LLC** hereinafter referred to as "Contractor").

### WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide Program Management Assistance in the administration of The Federal-aid Highway Program which duties and responsibilities are more particularly described in Addendum 1 attached hereto; and

WHEREAS, the contractor represents that he/she is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. **SERVICES**

The Contractor will provide the services described in Addendum 1 attached hereto.

2. **TERM**

Upon the execution of this Contract by the Governor of the US Virgin Islands, the initial term of this Contract shall be effective from April 22, 2016 to April 21, 2019. After the initial term, this contract may be renewed on the same terms and conditions for two (2) additional years at the sole discretion of the Government. Any such renewal or extension shall be contingent upon the satisfactory performance of the Contractor and the availability and appropriation of funds. The

F.M. Jr.

PO12DPWC18

Government shall give written notice to the Contractor of such extension or renewal, not less than sixty (60) days prior to the expiration of the initial term ("renewal term").

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I, agrees to pay the Contractor the sum of Three Hundred Sixteen Thousand Five Hundred Sixty-Five and Fifty One Cents (\$316,565.51) in accordance with the provisions set forth in Addendum 2 (Compensation) attached hereto and made a part of this contract.

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 by an Addendum to this Contract; however, said cost and expense shall not exceed Ten Thousand Dollars and No Cents (\$10,000.00).

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 his/her profession and to consultants doing business in the United States Virgin Islands.

Contract No. PO12DPWC18

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

All documents, books, records, instructional materials, programs, printouts, and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. **LIABILITY OF OTHERS**

Nothing in this Contract shall be construed to impose any liability upon government to persons, firms, associations, or corporation 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 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 or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

Contract No. PO12DPWCL8



**11. INDEPENDENT CONTRACTOR**

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

**12. GOVERNING LAW**

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

**13. WAIVERS AND AMENDMENTS.**

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification, or amendment in any 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 agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this agreement, whether written or oral.

**15. RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms, hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising

Contract No. PO2DPWC18

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. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable, in the event that such contest is not successful.

16. **CONDITION PRECEDENT**

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

17. **TERMINATION**

Either party will have the right to terminate this Contract with or without cause on Thirty Days written notice to the other party specifying the date of termination.

18. **PARTIAL TERMINATION**

The performance of work under this Contract may be terminated by the Government in part, whenever the Government shall deem such termination advisable. 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.

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 or national origin.

Contract No. PO12DPNC18

## 20. CONFLICT OF INTEREST

- a) Contractor 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 under this Contract.
- b) Contractor further covenants that he is:
  - i) 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
  - ii) a territorial officer or employee and, as such, has:
- c) Familiarized himself with the provisions of:
  - i) 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 his official capacity;
  - iii) no financial interest in the contract as that term is defined in Section 1101 (1) of said Code chapter.

## 21. NOTICE

Any notice required to be given by the Terms of this contract shall deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

Contract No. PO12DPWC18

Government

Commissioner  
Department of Property & Procurement  
Sub Base, Building No. 1  
St. Thomas, U.S.V.I. 00802

Commissioner  
Department of Public Works  
8244 Subbase Building No. 8  
St. Thomas, Virgin Islands 00802-5805

Contractor

NXG Testing and Consultants, LLC  
PO Box 2354  
Federiksted, St. Croix, USVI 00841

22. LICENSURE

The Contractor covenants that he has:

- a) Obtained all of the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and
- b) Familiarized himself/herself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

23. 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 sub-contracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the

Contract No. PO12DPWC8



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 contractor 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 become ineligible to receive contract awards using federal funds, this contract 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 the effective date of such ineligibility.

#### 24. 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.

#### 25. 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.

Contract No. P012DPW018



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

[Signature]  
Witness  
12/21/17  
Date

DEPARTMENT OF PUBLIC WORKS

[Signature]  
Nelson M. Petty, Jr.  
Commissioner Nominee  
12/21/17  
Date

[Signature]  
Witness  
6/19/18  
Date

DEPT. OF PROPERTY & PROCUREMENT

[Signature]  
Lloyd Bough, Jr.  
Commissioner  
6/19/18  
Date

[Signature]  
Witness  
12-18-17  
Date

CONTRACTOR:

[Signature]  
Frederick M. Mohammed Jr. (Principal)  
NXG Testing and Consultants, LLC.  
12/18/17  
Date

(Attachment and Corporate Seal, if a Corporation)

APPROVED:

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

6-28-18  
Date

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: [Signature]  
AAG

6/21/18  
Date

PURCHASE ORDER NO. \_\_\_\_\_

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract No. \_\_\_\_\_ entered into between the Department of Property and Procurement and NXG Testing and Consultants, LLC.

\_\_\_\_\_  
Lloyd Bough, Jr.  
Commissioner

Contract No. PO12DWC18