

## CONSTRUCTION CONTRACT

THIS CONTRACT (the "Contract") is made this \_\_\_\_ day of \_\_\_\_\_, 2018 in the Territory of the Virgin Islands, by and between the **Government of the Virgin Islands, Department of Property & Procurement**, on behalf of the **Department of Education** of 1834 Kongens Gade, St. Thomas, U.S. Virgin Islands 00802 (hereinafter referred to as "Government" or "VIDE") and **AECOM Caribe LLP** (hereinafter referred to as "Contractor" or "AECOM") of 72 Kronsprindsens 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 to furnish all labor, materials and equipment necessary for the **Purchase and Installation of Four (4) Temporary Classrooms on the Island(s) of St. Croix and St. Thomas** as more particularly described in *Addendum I*, (Scope of Work/ Basis of Estimate/ Basis of Design) (the "Services"); and

**WHEREAS**, the Services were solicited by the VIDE pursuant to 31 V.I.C §239 (a)(1); and

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

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

### 1. SERVICES

1.1 The Contractor will provide the Services described more particularly in Addendum I (Scope of Work, Basis of Estimate/ Basis of Design) incorporated herein by reference and made a part of this Contract.

1.2 The Services include the construction and installation of four (4) temporary classrooms and structures at two (2) school sites on the island of St. Thomas, and two (2) school sites on the island of St. Croix (each, a "Site" and collectively the "Sites") 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.

1.3 The Services, the Contract Sum, and the Contract Time are all based on the Government's criteria and on the information and assumptions in the details contained in Addendum I (Scope of Work/Basis of Estimate/Basis of Design), which

Contract No.

0002DOET19

1

Contractor's Initials

*SK*

addendum incorporates Contractor's Basis of Estimate and Basis of Design. The Parties agree that Contractor shall be entitled to Change Orders adjusting the Contract Time and Contract Sum if there are any requested or required changes in the Services that increase the cost or time to perform the Services, including but not limited to changes to the site plans, layouts, quantities, building selections, space planning, and/or programming, or other details and/or assumptions set forth in Addendum I (Scope of Work/Basis of Estimate/Basis of Design). Change Orders which would increase the Contract Time or Contract Sum are subject to the review and approval by the Government.

1.4 The Parties shall, in good faith, negotiate such Change Orders and agree that corresponding adjustments to the Contract Sum and Contract Time shall be evaluated based upon a comparison of: (a) the initial Basis of Design, Basis of Estimate, and cost proposal in Addendum I (Scope of Work/Basis of Estimate/Basis of Design); to (b) Contractor's updated Basis of Design, Basis of Estimate, and cost proposal after incorporating the requested or required change(s).

## 2. TERM

2.1 This Contract shall commence immediately upon execution of the Contract by the Governor (the "Commencement Date") and shall terminate on December 15, 2018 (Final Completion Date), or upon the Contractor obtaining full compliance of the terms of this Contract, whichever occurs earlier.

2.2 The Contract Time is defined as the period starting on the Commencement Date and ending December 15, 2018.

[THIS AREA IS INTENTIONALLY LEFT BLANK]

## 3. COMPENSATION

The Government, in consideration of satisfactory performance of the Services, agrees to pay the Contractor the sum not to exceed *One Million, One Hundred Three Thousand, Four Hundred Eighty Dollars and Seventy Seven Cents (\$1,103,480.77)* (the "Contract Sum") in accordance with the provisions set forth in Addendum IV

Contract No.

C002D0ET19

2

Contractor's Initials

*sch*

(Compensation), attached hereto and made a part of this Contract, subject to approved Change Orders.

**4. LIQUIDATED DAMAGES**

It being impracticable and infeasible to determine the amount of actual damages, it is agreed that if Contractor fails to obtain Final Completion of the Services by the Final Completion Date, then Contractor will pay the Government the sum of Two Hundred Fifty Dollars and Zero Cents (USD \$250.00) per calendar day for each and every day of delay thereafter until final completion of Sites, as liquidated damages and not as a penalty or forfeiture pursuant to Title 31 V.I. R. & Regs. § 242-87(a). The liquidated damages shall first be deducted from any contract monies due, but not yet paid to the extent available. Payment of liquidated damages shall be the Government's exclusive remedy, and Contractor's sole liability, arising from or relating to Contractor's delayed completion of the Services; however, this Paragraph shall not be construed as preventing the Government from the recovery of damages available under provisions of the Contract Documents that do not arise from or relate to the delayed completion of the Services. *sch*

**5. RECORDS**

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

**6. PROFESSIONAL STANDARDS**

The Contractor agrees to maintain the professional standards applicable to its profession and to Contractors doing business in the United States Virgin Islands.

**7. DOCUMENTS, PRINTOUTS, ETC**

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 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,

Contract No.

C002D0ET19

3

Contractor's Initials

*sch*

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 Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Contractor or whatsoever nature, including but not limited to unemployment insurance and social security taxes 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 approval of the Government.

## **10. INDEMNIFICATION**

Contractor agrees to indemnify, defend, and hold harmless the Government from and against any and all third party claims for bodily injury and property damage, including any loss, damage, liability, claims, demands, detriments, cost, charges and expenses (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.

## **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.

Contract No.

0002DOET19

4

Contractor's Initials

*Suk*



## **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, unless the parties agree to an alternative binding dispute resolution procedure in accordance with Paragraph 12.2(c).

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 options, 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

Contract No.

0002DOET19

5

Contractor's Initials



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 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 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**

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 IV (Compensation).

### **16. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor of the U. S. Virgin Islands.

Contract No.

C002D0ET19

6

Contractor's Initials



## **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 ten (10) days written notice to the other party 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 in accordance with the provisions of Addendum III (Termination) attached hereto and made a part hereof.

17.2 If the Government fails to make payments to the Contractor in accordance with this Contract and Addendum IV, 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.

17.4 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.

17.5 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 ten (10) days' written notice.

## **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 ten (10) days notice.

## **19. NON-DISCRIMINATION**

Contract No.

0002DOET19

Contractor's Initials



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

20.2 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, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provisions set forth in section 1108 thereof;
- (ii) not made, negotiated or influenced this contract, in its official capacity;
- (iii) no financial interest in the contract as that term is defined in section 1101, (1) of said Code chapter.

## **21. EFFECTIVE DATE**

The effective date of this Contract is upon the execution 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  
#3274 Estate Richmond, St. Croix

Contract No.

8

Contractor's Initials

0002DOET19



U. S. Virgin Islands 00820-4241

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

**CONTRACTOR**

**Steven Richards**  
Authorized Representative  
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, 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. CONTRACTOR'S REPRESENTATIONS**

24.1 The Contractor agrees that he is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract, and that he has been engaged in and now does such work and represents that he is fully equipped, competent, and capable of performing the work and is ready and willing to perform such work.

24.2 The Contractor agrees further to begin work not later than the date indicated on the formal notice to proceed and complete the work by December 15, 2018.

24.3 The Work shall be done under the direct supervision of the Government, and in accordance with the laws of the Government and its Rules and Regulations thereunder issued and any and all applicable federal rules and regulations. The parties hereto agree that this contract shall, in all instances, be governed by the Laws of the Government of the U.S. Virgin Islands.

Contract No.

0002DOET19

9

Contractor's Initials

*SA*

## **25. WARRANTY OF NON-SOLICITATION**

25.1 The Contractor expressly warrants that he has employed no person to solicit or obtain this contract on his behalf, or to cause or procure the same to be obtained upon compensation in any way, contingent, in whole or in part, upon such procurement, and that he has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by him hereunder; and that he has not, in estimating the contract price demanded by him included any sum by reason of such brokerage, commission or percentage; and that all monies payable to him hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract.

25.2 Breach of the warranty shall give the Government the right to terminate this Contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees.

## **26. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the U. S. 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 U.S. Virgin Islands law.

## **27. DEBARMENT CLAUSE**

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.

## **28. 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.

10

Contractor's Initials

COO2DOET19

*sol*

## **29. DAVIS BACON ACT**

Contractor hereby agrees that it shall comply with all rulings and interpretations of the Davis-Bacon Act (40 USC 276a-5) and AECOM agrees that all employees shall be paid the local prevailing wages as established by Virgin Islands statutes and laws.

## **30. CERTIFICATION OF EMPLOYMENT**

Contractor hereby agrees that pursuant to 31 V.I.C 236(h) it will hire at least two individuals from the Welfare to Work program administered by the Labor and Human Services Departments.

## **31. FORCE MAJEURE**

31.1 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.

31.2 If Contractor is delayed at any time in the commencement or progress of the Services by an act or neglect of the Government, 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 under this Contract; or (b) Government'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 31.1; 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.

## **32. 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.

## **33. CONCEALED OR UNKNOWN CONDITIONS**

Contract No.

0002DOET19

11

Contractor's Initials

*sch*

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 and approvals or entitlements regarding site utilization where essential to the execution of the Services.

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

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 with reasonable promptness and within such time period(s) so as not to delay the progress of the Services. 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 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. A Change Order shall be based upon a written agreement signed by both Parties.

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 Addendum I (Scope of Work/Basis of Estimate/Basis of Design), 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 in 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 including but not limited to 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 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 completion of the applicable Sites, 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.

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

38.1 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



0002DOET19

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.

38.2 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 III, section (a) shall apply.

38.3 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.

#### 39. LIABILITY INSURANCE

39.1 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.

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

#### 40. OTHER PROVISIONS:

40.1 The "Contract Documents" include this Contract, any amendments and executed Change Orders, *Addendum I*, (Scope of Work/ Basis of Estimate/ Basis of Design), *Addendum II* (General Provisions and Warranties together with the additional General Provisions - Construction), *Addendum III* (Termination of Contracts), and *Addendum IV* (Compensation) and *Addendum V* (Additional Terms and Conditions attached hereto. The Contract Documents are attached hereto, made a part of this Contract and are incorporated herein by reference.

Contract No.

0002DOET19

16

Contractor's Initials



IN WITNESS WHEREOF, the parties intending to be legally bound have hereunto set their hands on the day and year first above written.

**WITNESSES:**

**GOVERNMENT OF THE VIRGIN ISLANDS**

**DEPARTMENT OF PROPERTY AND PROCUREMENT**



  
Lloyd T. Bough, Jr.  
Commissioner

Date: 9/27/18

**DEPARTMENT OF EDUCATION**

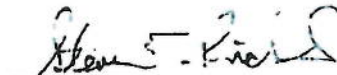


  
Sharon McCollum, Ph.D.  
Commissioner

Date: 9/28/18

**CONTRACTOR**  
AECOM Caribe, LLP



  
Steven Richards  
Authorized Representative

Date: 9/27/18

**APPROVED:**

*(Corporate seal, if Contractor is a Corporation)*

  
Kenneth E. Mapp  
Governor of the U.S. Virgin Islands

Date: 10-01-18

**APPROVED AS TO LEGAL SUFFICIENCY**  
Department of Justice:

  
Assistant Attorney General

Date: 9/28/18

Purchase Order No. \_\_\_\_\_

Contract No.

18

Contractor's Initials



C002D0ET19

**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, on behalf of the  
Department of Education and AECOM Caribe, LLP



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

Contract No. C002D0ET19

Contractor's Initials

