

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT** ("MOA") is made this 27<sup>th</sup> day of May, 2020, 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 Office of Management and Budget, Division of Economic Research (hereinafter referred to as "Government") and the University of the Virgin Islands, Center for Excellence in Leadership and Learning (CELL), (hereinafter referred to as "University").

### WITNESSETH:

**WHEREAS**, phase II of the USVI Tourism Master Plan 2020 (TMP2020) will capture and address the post-hurricane impacts on the tourism industry and ways to make the industry less vulnerable to economic downturns and natural disasters. Phase II of study will assess the tourism products and assets to understand what is in place, being rebuilt, or have closed. The goal is to develop a TMP that lays out the path to a more competitive, diversified, sustainable, and resilient tourism industry for the territory;

**WHEREAS**, Government is authorized to enter into this Agreement pursuant to Title 17 of the Virgin Islands Code, section 467 and Title 3 of the Virgin Islands Code, section 74, which provides for departments and agencies of the Government to enter into contracts with the University and for the University to have first rights of refusal to conduct Government financed research projects;

**WHEREAS**, the University of the Virgin Islands, Center for Excellence in Leadership and Learning is equipped with the expertise, personnel and experience to carry out this study; and University represents that it is willing and capable of providing such services;

**WHEREAS**, the U. S. Department of Commerce, Economic Development Administration has allocated additional resources for the elaboration of the TMP2020 by making available the services of International Economic Development Council (IEDC), a membership organization of professional economic development specialists, to supplement and complement the capacities of the University in developing the TMP2020.

**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

University will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract.

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## **2. TERM AND EFFECTIVE DATE**

This MOA shall commence upon the execution of this MOA by the Commissioner of the Department of Property and Procurement and shall terminate September 30, 2020.

## **3. COMPENSATION**

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), agrees to pay University the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000.00) in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this MOA.

## **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 FOUR THOUSAND DOLLARS (\$4,000.00).

## **5. RECORDS**

University when applicable will present documented precise records of time and/or money expended under this Contract.

## **6. PROFESSIONAL STANDARDS**

University 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.**

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

## **8. LIABILITY OF OTHERS**

Nothing in this MOA shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by University 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 University its servants, agents or independent contractors.

#### **9. ASSIGNMENT**

The University shall not subcontract or assign any part of the services under this MOA without the prior written consent of the Government.

#### **10. INDEMNIFICATION**

To the extent permitted by law, the University 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 University under this MOA and arising from any cause, except the sole negligence of Government.

#### **11. INDEPENDENT CONTRACTOR**

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

#### **12. GOVERNING LAW**

This MOA 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 MOA 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 MOA, 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 MOA 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**

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If work under this MOA is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to University, 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. Government will immediately notify the University in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while University 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 MOA shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

#### **17. TERMINATION**

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

#### **18. PARTIAL TERMINATION**

The performance of work under this MOA may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing thirty (30) days written notice to the University. This partial termination shall be effected by delivering to the University, a Notice of Partial Termination specifying the extent to which the term and/or duties under this MOA are terminated and the date upon which such termination becomes effective. The University 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 MOA on account of race, creed, color, sex, religion, disability or national origin.

#### **20. CONFLICT OF INTEREST**

The University 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 MOA.

#### **21. NOTICE**

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

**GOVERNMENT**

Anthony D. Thomas  
Commissioner  
Department of Property and  
Procurement  
8201 Sub Base, Suite 4  
St. Thomas U.S. Virgin Islands 00802

Jenifer C. O'Neal  
Director  
Office of Management and Budget  
Emancipation Gardens Station 2<sup>nd</sup> Floor  
5041 Norre Gade,  
St. Thomas, USVI 00802

David Hall, SJD  
President  
University of the Virgin Islands  
2 John Brewer's Bay  
St. Thomas, VI 00802-9990

**22. LICENSURE**

University covenants that it has:

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

**23. OTHER PROVISIONS**

Addenda I and II attached hereto are a part of this MOA and are incorporated herein by reference.

**24. DEBARMENT CERTIFICATION**

By execution of this MOA, the University certifies that it is eligible to receive awards using federally appropriated funds and that it has not been suspended or debarred from entering into agreements with any federal agency. University shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF

5 General Contract No. 60440MBT20

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**PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT".** In the event University or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the University or subcontractor agrees that it shall not be entitled to payment for any work performed under this MOA or any subcontract and that the University or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

## 25. FALSE CLAIMS

University warrants that it shall not, with respect to this MOA, 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. University acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

## 26. NOTICE OF FEDERAL FUNDING

University acknowledges that this MOA is funded, in whole or in part, by federal funds. University warrants that it shall not, with respect to this MOA, make or present any claim knowing such claim to be false, fictitious, or fraudulent. University acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

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

### WITNESSES:

1. *Dr. Wayne Weather*
2. *Mark D. Winn*

### GOVERNMENT OF THE VIRGIN ISLANDS

*Jenifer C. O'Neal*  
Jenifer C. O'Neal, Director  
Office of Management and Budget

*4/16/2020*  
Date

1. *Angelina A. Thomas*
2. *Anthony D. Thomas*

*Anthony D. Thomas*  
Anthony D. Thomas, Commissioner  
Department of Property and Procurement

*5/27/2020*  
Date

### CONTRACTOR

1. *Una Dyer*  
DocuSigned by:  
8647E8B6F19453...
2. *Mindy Solivan*  
453AD6F0FB254F6...

*David Hall*  
DocuSigned by:  
TS0870CA92F97FF1  
Dr. David Hall, President  
University of the Virgin Islands

*4/1/2020*  
Date

APPROVED AS TO LEGAL SUFFICIENCY

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Initials: *DS*