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## CONTRACT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made this 8th day of September, 2021, 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 Health (hereinafter referred to as "Government or DOH") and Flad & Associates, Inc. dba Flad Architects (hereinafter referred to as "Contractor").

### WITNESSETH:

**WHEREAS**, the Government is in need of the services of a Contractor to provide architectural & engineering services, construction administration and commissioning services, which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

**WHEREAS**, the Government solicited the services under RFP No. RFP-001-C-2021; 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 hereto do covenant and agree as follows:

### 1. SERVICES

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

### 2. TERM AND EFFECTIVE DATE

This Contract shall be effective upon the date of execution of this Contract by the Governor of the U.S. Virgin Islands and shall terminate Forty-Eight (48) months thereafter. The Government in its sole discretion, shall have the option to extend this Contract, at no additional cost, for two (2) additional periods of twelve (12) month(s) each subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.



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### **3. COMPENSATION**

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor a sum not to exceed Eight Million, Four Hundred Ten Thousand, Two Hundred Fifty-One Dollars and No Cents (\$8,410,251.00) in accordance with the provisions set forth in Addendum II (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 to by an addendum to this Contract, however, said costs and expenses shall not exceed Three Hundred Fifty-Eight Thousand, Three Hundred Sixty Dollars and No Cents (\$358,360.00).

### **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 its profession and to consultants doing business in the United States Virgin Islands.

### **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. Notwithstanding the foregoing, Contractor retains all right, title and interest in Contractor's design specifications and related materials which have been developed prior to or independent of the Work hereunder and not specific to the Work.

### **8. LIABILITY OF OTHERS**



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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, gross receipt, excise, and social security taxes for Contractor, its servants, agents or independent contractors; provided, however, that the Contractor shall not be liable for any construction contractor(s)' acts or omissions or failure to perform the obligations of the contract(s) between such construction contractor(s) and the Government, so long as the same are not caused by the Contractor's own acts or omissions or failure to perform its own obligations under this Contract..

## 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. With respect to consultants and subcontractors disclosed in the Contractor's Proposal, specific prior written consent shall not be required, provided that the use of a subcontractor or consultant shall not act to relieve the Contractor of any of its obligations hereunder.

## 10. INDEMNIFICATION AND DEFENSE

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of the negligence or breach of contract by Contractor and that arise out of Contractor's performance and non-performance of the services under this Contract except the sole negligence of Government. This clause shall survive termination or expiration of this Contract.

In the event the Government is required to defend or respond to a claim alleged to have been caused, in whole or in part, by the conduct of Contractor, in any way connected to the services to be performed by Contractor under this Contract, or related to any acts arising out of those set out above, the Contractor shall promptly accept the tender of defense made by the Government, as a condition of this Contract. Such cooperation shall include, without limitation, providing appropriate expert or other review and testimony, document production and any other reasonable assistance, including court costs and attorney's fees, to the Government until such matter is finally resolved.

## 11. INDEPENDENT CONTRACTOR

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RFP No. 001-C-2021 (P)

Contractor's Initials: JGZ

Contract No. P129DOHT21





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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. In the event circumstances not caused by the Contractor's errors and omissions (A) delay the commencement or progress of the Work or (B) require a change to the Scope of Work, the Contractor shall be entitled to an equitable extension of the Completion Date, and to the extent such delay or change in the Scope of Work alters the cost of performance of services hereunder or the expenses of performance, Contractor shall be entitled to an equitable adjustment of the Contract Price. When the Contractor becomes aware of such an event, the Contractor shall so notify the Government, and the Parties will execute an amendment to reflect any agreed upon changes to the Scope of Work, Completion Date or Contract Price, as the case may be.

## 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 therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to



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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 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 (30) 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 by providing thirty (30) days written notice to the Contractor. 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, disability or national origin.

## **20. CONFLICT OF INTEREST**

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.

Contractor further covenants that it is:



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- (1) 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
- (2) 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; and
  - (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 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, MBA  
Commissioner  
Department of Property and Procurement  
8201 Subbase, Suite 4  
St. Thomas Virgin Islands 00802

Justa E. Encarnacion, RN, BSN, MBA/HCM  
Commissioner of Department of Health  
3500 Estate Richmond  
Christiansted, St. Croix VI 00820

### CONTRACTOR

Jeffrey C. Zutz, President and CEO  
Flad & Associates, Inc. dba Flad Architects  
644 Science Drive  
Madison, WI 53711  
with copies via email to: [jzutz@flad.com](mailto:jzutz@flad.com)  
[sjackson@flad.com](mailto:sjackson@flad.com)  
[khenshue@facfin.com](mailto:khenshue@facfin.com)





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## 22. LICENSURE

The Contractor covenants that it has:  
obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and  
familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

## 23. OTHER PROVISIONS

Addenda I, II, III, IV and V attached hereto are a part of this Contract and are incorporated herein by reference

## 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

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

## 26. 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



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knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

## **27. FORCE MAJEURE**

The Parties' performance under this Agreement shall be excused so long as the force majeure event prevents the performance of any obligation hereunder when such delay is occasioned by events or occurrences beyond their control, including but not limited to, acts of God, war or threat of war, government retaliation against foreign or domestic enemies, terrorism, governmental regulation, civil disorder, adverse governmental actions or conditions, epidemic, pandemic, recognized health threats as determined by the Centers for Disease Control and Prevention (CDC) or local health agency, disaster, fire, strikes either real or threatened curtailment of transportation facilities, or other similar cause beyond the control of the Parties (collectively, "Force Majeure"), making it from an economic, political, personal safety, or policy basis, illegal, inadvisable, or objectively impossible or commercially unreasonable to fulfill the terms of this Agreement. This Agreement may be terminated, and/or specific nonperformance or under-performance may be excused, without penalty or payment, except for those Services already provided, for any one or more of such reasons by written notice from the other Party.

## **28. SEVERABILITY**

If any provision(s) of this Contract shall be held to be invalid, illegal, unenforceable or in conflict with the law of the United States Virgin Islands, it shall be regarded as stricken and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

## **29. PENALTY**

The Contractor shall pay to DOH as a penalty, up to One Hundred Fifty Dollars and No Cents (\$150.00) for each business day that a deliverable is late until deemed in compliance, subject to a maximum penalty of Five Thousand Dollars and No Cents (\$5,000.00), per deliverable. Penalty damages may be assessed at the reasonable discretion of DOH. For the purpose of calculating such penalty damages, a grace period of ten (10) days shall be observed and the contracts schedule shall be extended by any additional time or delays outside the control of the Contractor caused by an act of commission, omission or delay of DOH. DOH may deduct and retain out of the monies, which may become due hereunder the amount of any such liquidated damages, and in case the amount which may become due hereunder shall be less than the amount of the liquidated damages due to DOH, the Contractor shall be liable to pay the difference.

## **30. WARRANTY OF NON-SOLICITATION:**

The Contractor expressly warrants that it has not employed any person to solicit or obtain this contract on its behalf, or cause or procure the same to be obtained upon compensation in any way,





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contingent, in whole or in part, upon such procurement, and that it 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 it hereunder; and that it has not, in estimating the contract price demand, included any sum by reason of such brokerage, commission or percentage, and that all monies payable to it hereunder are free from obligation to any other person for services rendered, supposed to have been rendered, in the procurement of this contract. Breach of this warranty shall give VIHFA the right to terminate this Contract or, in its discretion, to deduct from the Contract Cost or consideration the amount of such commission, percentage, brokerage or contingent fees.

### 31. TAXES:

Contractor is responsible for payment of all applicable federal and local Territorial taxes, including any taxes of any out-of-state employees who are currently assigned to this project and are working within the Territory.

(a) GROSS RECEIPT TAXES: Title 33 V.I.C. Ch.3, §44, as amended requires all Government agencies including the Virgin Islands Housing Finance Authority ("VIHFA"), when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33 VIC Section 43(a) for each payment for Work performed in the Virgin Islands. It is agreed between the Parties that for the purposes of complying with Title 33, Ch. 3, Section 44 of the Virgin Islands Code, VIHFA shall withhold and forward to the Virgin Islands Bureau of Internal Revenue ("VIBIR") such amount as required by the law at 33 VIC Section 43) or any amendments thereto.

(b) The Contractor agrees that the calculation and payment of gross receipts taxes shall be its sole responsibility. The Authority shall not be responsible in any way for any miscalculation, or additional assessments by the VIBIR resulting from Work performed under this Contract. In the unlikely event any overpayment or underpayment is made to the VIBIR, the Contractor shall resolve such matter with VIBIR and inform the Authority of the resolution thereof.

### 32. CONFIDENTIAL INFORMATION

It is understood and agreed that Contractor, including but not limited to its employees, agents and assign, shall maintain as confidential all information that Government may disclose to Contractor.



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Contractor shall take all steps to protect and to not disclose this information, unless the information is either:

- i. known to the disclosing party prior to its receipt from the other party without a limitation or obligation of confidentiality under another agreement;
- ii. independently developed by the disclosing party without use of the other party's protected information or data;
- iii. in the public domain at the time of disclosure through no fault of the disclosing party;
- iv. received from a third party with a legal or contractual right to disclose such information or data; or
- v. required to be disclosed as a result of a legal obligation to do so; provided, however, that the disclosing party shall provide 10 days' prior written notice to the other party of its intention to disclose such information.

### 33. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract

1. **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.
2. **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars (\$1,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.
3. **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

### 34. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.



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

**WITNESSES:**

**GOVERNMENT OF THE VIRGIN ISLANDS**

Doreen A. Dunlop-Harley

Gusta F. Encarnacion  
Gusta F. Encarnacion, Commissioner  
Department of Health

6/18/2021

Date

Stephen A. Thomas

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

7/29/2021

Date

**CONTRACTOR**

Jeffrey C. Lutz

J.C. Lutz  
Jeffrey C. Lutz, President and CEO  
Flad & Associates, Inc. dba Flad Architects

06/18/2021

Date

(Corporate seal if Contractor is a corporation)



**APPROVED:**

Honorable Albert Bryan Jr.

GOVERNOR OF THE U.S. VIRGIN ISLANDS

Date: 9/8/21

**APPROVED AS TO LEGAL SUFFICIENCY**

DEPARTMENT OF JUSTICE BY: Carol P. McDougal

Assistant Attorney General

Date 8/16/2021

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

RFP No. 001-C-2021 (P)

Contractor's Initials: JCL

Contract No. P129DOHT21