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CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 6th day of December, 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 Public Works (hereinafter referred to as "Government") and Kimley-Horn and Associates, Inc. (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide Design and Engineering related to Phase I Drainage Improvement to Donoe Bypass on the island of St. Thomas 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.045-T-2020(P); 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 subject to the Contractor's Technical Approach in response to RFP No. 045-T-2020(P) attached hereto to as Addendum III and made part hereof.

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 **Three Hundred and Sixty-Five (365) days** thereafter. The Government in its sole discretion, shall have the option to renew this Contract for a period of One additional (1) additional year subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.

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 **Two Million Seven Hundred Thousand Dollars (\$2,700,000.00)** in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.

RFP No. 045-T-2020(P)
Contract No. P022DPWT22

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Contractor's Initials: MA



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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 One Hundred Fifteen Thousand **(\$115,000.00)**.

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 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.

8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipt, excise, 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.



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10. INDEMNIFICATION

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 or in any way connected to the services to be performed by Contractor under this Contract to the extent arising from contractors' negligence, except the sole negligence of Government.

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 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) days** 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

- (a) 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.
- (b) Contractor further covenants that it is:
 - (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



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- 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
Commissioner
Department of Property and Procurement
8201 Subbase, Suite 4
St. Thomas Virgin Islands 00802

Derek Gabriel
Commissioner
Department of Public Works
8244 Subbase,
St. Thomas Virgin Islands 00802

CONTRACTOR

Mudassar M. Alam
Senior Associate
Kimley-Horn and Associates, Inc
421 Fayetteville Street Suite 600
Raleigh North Carolina 27601

22. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and



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- (b) 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 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. WARRANTY OF NON-SOLICITATION

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



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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. 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.

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. FORCE MAJEURE

The Parties' performance under this Contract 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 of 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, this objectively impossible or commercially unreasonable to fulfill the terms of this Contract. This Contract 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.

30. PENALTY

The Contractor shall pay to the Government, as a penalty, up to \$150.00 for each calendar day that a deliverable is late until deemed in compliance, subject to a maximum penalty of \$1,000.00 per occurrence. Penalty damages may be assessed at the reasonable discretion of the Government. For the purpose of calculating such penalty damages, a grace period of ten (10) days shall be observed and the contract 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 the Government 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 the Government, the Contractor shall be liable to pay the difference.



31. CONFIDENTIAL INFORMATION

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

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 limitation or obligation of confidentiality under another Contract
- 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;
- 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.

32. INSURANCE

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

- (a) **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.
- (b) **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 two million dollars (\$2,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.



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- (c) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

33. 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 amended¹, requires 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(a) 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.

¹ (a) The Government of the Virgin Islands, including its instrumentalities, agencies and public corporations, when making a payment as defined under subsection (b) of this section, to any person, partnership, firm, corporation, or other business association that is subject to the payment of gross receipts tax under the provisions of this title, shall deduct and withhold from such payment gross receipts tax equal to four percent of such payment. Such tax shall be paid to the Virgin Islands Bureau of Internal Revenue within ten days of the last day of the calendar month during which such tax was withheld on forms to be provided by the Virgin Islands Bureau of Internal Revenue.

(b) For purposes of withholding under this section, "payment" is defined as the following:

(1) any single payment of at least \$30,000; and
(2) any payment pursuant to a contract providing for a total expenditure of \$225,000 or more

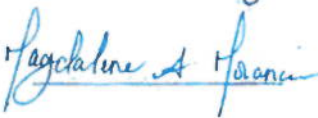
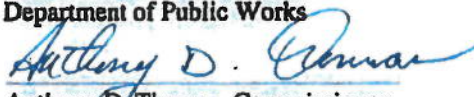
34. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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



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

WITNESSES:

	GOVERNMENT OF THE VIRGIN ISLANDS	<u>9/29/2021</u>
	Derek Gabriel, Commissioner	Date
	Department of Public Works	
		<u>10/12/2021</u>
	Anthony D. Thomas, Commissioner	Date
	Department of Property and Procurement	
	CONTRACTOR	<u>09/20/2021</u>
<u>9/20/2021</u>		Date
	Mudassan M. Alam, Senior Associate	
	Kimley-Horn and Associates, Inc	

(Corporate seal if Contractor is a corporation)

APPROVED:


Honorable Albert Bryan Jr.
GOVERNOR OF THE U.S. VIRGIN ISLANDS

Date: 12/6/21

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:


Assistant Attorney General Date 10/21/2021

PURCHASE ORDER NO. _____