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CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 21st day of February, 2023, 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, VI 00802 (hereinafter referred to as "Government") and **Harnel International LLC d/b/a Harnel Engineering & Construction of 7930 Estate Emmaus, St. John, US Virgin Islands 00830** (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of qualified and experienced Contractor to furnish all labor, materials and equipment necessary in designing, constructing, and relocating the Department of Education's State Administrative office to Crown Bay Business Center on the island of St. Thomas in strict accordance with the plans and specifications (incorporated by reference and made a part of this contract), which duties and responsibilities are more particularly described in *Addendum I*, (Scope of Work), *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 (Provisions from 2 CFR 200 - Appendix II) attached hereto; and

WHEREAS, the Government solicited the services under **RFP No. BD-22-400-4001-113(P)** – Design Build Architectural and Construction Services at the Department of Education Administrative Office in Crown Bay Center, St. Thomas, U.S. Virgin Islands; and

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

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

1. SERVICES

The Contractor will provide the services described more particularly in Addendum I (Scope of Work) incorporated herein by reference and made a part of this professional services contract.



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2. TERM AND EFFECTIVE DATE

This Contract shall commence upon the date of execution by the Commissioner of the Department of Property and Procurement and shall terminate **Three Hundred and Sixty-Five (365)** calendar days thereafter to allow time for processing of final payment and financial closeout of the project from the issuance of the formal Notice to Proceed, or in accordance with an agreed upon extension pursuant to Addendum II (General Provisions and Warranties together with the additional General Provisions- Construction Contracts) attached hereto and made a part hereof. The Substantial Completion Deadline for the professional services shall be June 30, 2023, which date shall thereafter be subject to adjustments approved by the Government (the “Substantial Completion Deadline”).

2.2 The “Contract Time” is defined as the period of time starting on the Commencement Date and ending 365 days after the execution of the Contract..

2.3 “Substantial Completion” is defined as the stage of the Contractor’s work that is sufficiently complete in accordance with this Contract. Furthermore, activities past Substantial Completion required by the Contractor to bring the project to a 100% completion stage (i.e., the “Punch List” stage) will not interfere with the Government’s use of the property. A Certificate of Substantial Completion will be applied for by the Contractor to meet the Substantial Completion Deadline. Occupancy and the readiness of the Site by the Government does not constitute acceptance of the work nor relieve the Contractor from completing all items on the punch list to bring the project to a 100% completion state.

2.4 The “Substantial Completion Deadline” is defined as the date by which the Contractor shall have obtained a Certificate of Substantial Completion.

3. COMPENSATION

The Government, in consideration of satisfactory performance of the services described in Addendum I, agrees to pay the Contractor the sum of **Four Hundred Forty Thousand Dollars and Zero Cents (\$440,000.00)** in accordance with the provisions set forth in Addendum IV (Compensation), attached hereto, hereby incorporated by reference 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



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non-contract employees of the Government, or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed **Not Applicable N/A (\$ 0.00)**.

5. LIQUIDATED DAMAGES

It is hereby expressly agreed by the parties hereto that in the event the Contractor's performance is not excused and the Contractor has not completed the scope of work under the term set forth in Paragraph 2 hereof, One Hundred Dollars (\$100.00) for each calendar day or portion thereof shall be due the Government. The liquidated damages shall first be deducted from any contract monies available, but not yet authorized to the extent available.

6. RECORDS

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

7. 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.

8. DOCUMENTS, PRINTOUTS, ETC.

Certified copies of 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 completion of this Contract, or at the Government's request, during the life of the 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.

9. 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 except for its own negligence or that of its agents, servants, employees or independent contractors. The Government shall not be liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes 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.



10. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this contract without the prior written approval of the Government.

11. INDEMNIFICATION

Contractor agrees to indemnify, defend, and hold harmless the Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which the Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

12. 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.

13. GOVERNING LAW

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

14. 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.

15. ENTIRE AGREEMENT

This Contract constitutes the entire agreement of the parties relating to the subject matter addressed herein. This Contract supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed herein, whether written or oral.



16. RIGHT TO WITHHOLD

If services under this Contract are not provided in accordance with the terms, hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may reasonably deem ample to protect it against loss to assure payment of claims arising therefrom, and, its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will notify the Contractor in writing no less than five (5) business days of its intention to exercise its right to withhold.

17. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement. The Contractor is relieved of any responsibility to perform any parts of this Contract upon notice of the non-availability of funds or the withdrawal of the appropriation of funds for this Contract.

18. TERMINATION

Either Party will have the right to terminate this Contract with cause on thirty (30) days written notice to the other party specifying the date of termination. The attached "Addendum III-Termination of Contracts for the Convenience of the Government" is hereby fully incorporated herein by reference and is made a part of this agreement.

19. 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.

20. 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.



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21. 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 perform 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 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, 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; and
 - (iii) no financial interest in the contract as that term is defined in section 1101 (1) of said Code chapter.

22. EFFECTIVE DATE

The effective date of this Contract is upon the execution by the Commissioner of the Department of Property and Procurement.

23. 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 Sub Base, Suite 4
St. Thomas USVI 00802

Dionne Wells-Hedrington, Ed.D.
Commissioner
Department of Education
1834 Kongens Gade
St. Thomas, VI 00802



CONTRACTOR

Habibah Bell, G.C., P.E.
President
Harnel International LLC d/b/a
Harnel Engineering & Construction
7930 Estate Emmaus
St. John, VI 00830

24. 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.

25. CONTRACTOR'S REPRESENTATIONS

The Contractor agrees that it is fully informed regarding all the conditions affecting the services to be performed for the completion of the Contract, and that it has been engaged in and now provides such services and represents that it is fully equipped, competent, and capable of providing the services and is ready and willing to perform under the Contract.

The Contractor agrees further to begin work not later than the date indicated on the formal Notice to Proceed and complete the services within the number of days specified in the proposal or as extended in accordance with the General Provisions of the Contract.

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 Virgin Islands.

26. WARRANTY OF NON-SOLICITATION

The Contractor expressly warrants that it nor its officers, agents or employees has employed no person to solicit or obtain this contract on its 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 it nor its officers, agents or employees has not paid, or promised or agreed to pay to any persons, 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 it nor its officers, agents or employees has not, in estimating the contract



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price demanded by it 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, 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.

27. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

28. 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 willfully 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 services provided under this Contract or any subcontract. The Government of the Virgin Islands is entitled to be reimbursed any progress payments heretofore made upon written demand.

29. OTHER PROVISIONS

Addendum I (Scope of Work), Addendum II (General Provisions and Warranties), Addendum III (Termination of Contracts), Addendum IV (Compensation), and Addendum V (Provisions from 2 CFR 200 - Appendix II) attached hereto are hereby incorporated by reference and made a part of this contract.

30. 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



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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 an 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 one million dollars (\$1,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.
- (c) WORKERS' COMPENSATION: Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

31. PAYMENT AND PERFORMANCE BONDS

The Contractor shall comply with the following minimum bonding requirements:

- (a) A performance bond to secure Contractor's obligations and performance under the contract for 100% of the Contract price; and
- (b) A payment bond to assure payment to all persons supplying labor and material in the execution of the work provided for in the contract for 100% of the Contract price; or
- (c) In case of preferred bidders only, any allowable form of guaranty allowed under 31 V.I.C. § 236a and as approved by the Commissioner of the Department of Property and Procurement.

32. 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 that the contractor and subcontractor agrees that all employees shall be paid the local prevailing wages as established by Virgin Islands statutes and laws.

33. 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.

34. CHANGES IN CONSTRUCTION SERVICES

Any changes in the Construction Services may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order subject to the limitations stated in



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Addendum II (General Provisions – Construction) and 31 V.I. R. & REGS. §§ 242-32 and 242-33. A Change Order is a written instrument signed by the Government and Contractor stating their agreement upon the change in the Services which are within the Scope of Work, 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 without a Change Order executed in accordance with Virgin Islands law.

35. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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

36. FORCE MAJEURE

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, pandemics or endemics, or any act of God, discovery or uncovering of hazardous or toxic materials or historical artifacts at the Project sites, unusually severe weather, the effect of any named storm, 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.

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CONTRACT NO. P028DOET23
BD-22-400-4001-113 (P)

CONTRACTOR’S INITIAL: HB



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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

[Signature]

Dionne Wells-Hedington
Dionne Wells-Hedington, Ed.D.
Commissioner
Department of Education

Date: 01/25/2023

[Signature]

[Signature]
Lisa M. Alejandro, Acting Commissioner
Department of Property and Procurement

Date: 2/21/2023

[Signature]

CONTRACTOR
[Signature]
Habibah Bell, President
Harnel International, LLC d/b/a
Harnel Engineering & Construction

Date: 1/9/2023

(Corporate seal, if Contractor is a corporation)

APPROVED AS TO LEGAL SUFFICIENCY

AT THE DEPARTMENT OF JUSTICE BY: [Signature] Date 2/21/2023
Assistant Attorney General

CONTRACT NO. P028DOET23
BD-22-400-4001-113 (P)

CONTRACTOR'S INITIAL: [Signature]