



OPCMR

## CONTRACT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made this 23rd day of August, 2023, 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 Jomo L. McClean (hereinafter referred to as "Contractor").

### WITNESSETH:

**WHEREAS**, the Government is in need of the services of a Contractor to provide Program Management Assistance in the administration of the Federal-Aid Highway Program, which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

**WHEREAS**, the Contractor was selected in accordance with 31 V.I.C. §239(a)(8); and

**WHEREAS**, the Contractor is currently the territorial Highway Program Manager, for the Government's Federal-Aid Highway Program; and is performing the services under Contract No. P001DPWT19, renewed by Contract No. G012DPWT22; and

**WHEREAS**, the Government has a continued need for a Highway Program Manager to provide Program Management Assistance in the administration of the Federal-Aid Highway Program; 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 shall provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract.

### 2. TERM AND EFFECTIVE DATE

The Term of this Contract shall be from August 20, 2023, through August 19, 2026. Upon execution of this Contract by the Commissioner of the Department of Property and Procurement, this Contract shall be effective for the Term set out herein. The Government, in its sole discretion, shall have the option to renew this Contract for a period of two (2) additional years subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.



OPCMR

### 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 **Five Hundred Twenty Thousand, Six Hundred Nineteen Dollars and Twenty Cents (\$520,619.20)** 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 **Ten Thousand Dollars and Zero Cents (\$10,000.00)**.

### 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.



OPCMR

## 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.

## 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 and arising from any cause, 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



OPCMR

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 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 Commissioner of the Department of Property and Procurement.

## 17. TERMINATION

The Government shall have the right to terminate this Contract if the Contractor's work is deemed unsatisfactory by providing **sixty (60)** days written notice to the Contractor 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 **sixty (60)** 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 **sixty (60)** 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

- (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 or employee of the legislative, executive or judicial branch of the Government



OPCMR

- or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or a territorial officer or employee and, as such, has:
- (2)
    - (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

Lisa M. Alejandro  
Commissioner Designee  
Department of Property and Procurement  
8201 Sub Base, Suite 4  
St. Thomas, Virgin Islands 00802

Derek Gabriel  
Commissioner  
Department of Public Works  
8244 Sub Base  
St. Thomas, VI 00802

### CONTRACTOR

Jomo L. McClean  
P.O. Box 7572  
St. Thomas, VI 00801

## 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
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.



OPCMR

## 23. OTHER PROVISIONS

Addenda I, and II 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. The 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. The Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

## 27. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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



OPCMR

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

GOVERNMENT OF THE VIRGIN ISLANDS

*Derek Gabriel*  
Derek Gabriel, Commissioner  
Department of Public Works

8/17/2023  
Date

*Lisa M. Alejandro*  
Lisa M. Alejandro, Commissioner Designee  
Department of Property and Procurement

8/23/2023  
Date

CONTRACTOR

*Jomo L. McClean*  
Jomo L. McClean

8/17/2023  
Date

(Corporate seal if Contractor is a corporation)

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY: /s/ *Jan Stephen Anthony Clement, Esq.* Date 8/23/23  
ASSISTANT ATTORNEY GENERAL

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