



## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT** (“the Agreement”) is made this 23rd day of February, 2024 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 Planning and Natural Resources (hereinafter referred to as the “Government”) and the Virgin Islands Port Authority, an independent instrumentality of the Government (hereinafter referred to as “VIPA”) or the “ Authority”). The Government and the Authority may be referred to in this Contract individually as a “Party” or collectively as “Parties”.

### WITNESSETH:

**WHEREAS**, pursuant to 3 V.I.C. § 401, the purpose of the Government is to administer and enforce all laws pertaining to environmental protection, control the mooring and anchoring of vessels in the harbors of the Virgin Islands, conduct land and development survey, issue building, earth change and zoning permits; and

**WHEREAS**, pursuant to 29 V.I.C. § 543, the purpose of the Authority is to establish, acquire, construct, develop, improve, own, operate and manage any and all types of air and marine terminals; to control the harbors of the Virgin Islands other than controlling the mooring and anchoring of vessels; and to make available the benefits thereof in the widest economic manner, thereby promoting the general welfare and increasing commerce and prosperity; and

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

**WHEREAS**, the Authority in compliance with the U.S. Department of Transportation, Maritime Administration Regulation Standards is required to maintain an on-call consultant with an architectural and engineering firm to provide consulting services for its marine capital improvement projects (CIP); and

**WHEREAS**, the Authority currently has a Master Service Agreement (MSA) with Moffatt and Nichol, (hereinafter referred to as A/E Consultant Firm) to provide architectural and engineering consultant services, including but not limited to the planning, design, development of construction documents and providing construction administration services (“Professional Services”) to the Authority for its CIP projects; and

**WHEREAS**, the Government owns the Frederiksted Harbor Fish Market property located at Frederiksted, St. Croix, Virgin Islands and the Roll-on/Roll-off Ramp at Krause Lagoon property located at Krause Lagoon, St. Croix, Virgin Islands (hereinafter referred to as the “facilities”); and

General Contract No. G017PNRT24

Initials: CJ



**WHEREAS**, the Government has received funds under Sec. 12005 of the CARES Act and Consolidated Appropriations Act (CAA) of 2021 and Legislative Act No. 8448 for the marine capital improvement of its facilities; and

**WHEREAS**, the Parties have agreed that it is in the Government's best interest to collaborate with the Authority to engage its A/E Consultant Firm to assist in the planning, design, development of construction documents for the capital improvement of its facilities; and

**WHEREAS**, the Parties have agreed that the cost of these services will be in an amount not to exceed Two Hundred Fifty-Five Thousand, Five Hundred Fifty Dollars and Zero Cents (\$255,550.00) to be broken down as follows: One Hundred and Eighty-Five Thousand, Two Hundred Seventy-Five Dollars and Zero Cents (\$185,275.00) for the Frederiksted Harbor Fish Market and Seventy Thousand Two Hundred Seventy-Five Dollars and Zero Cents (\$70,275.00) for the Roll-on/Roll-off Ramp at Krause Lagoon; 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 Authority will provide the Services described in Addendum I (Scope of Work) attached hereto and made a part of this contract.

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

This MOA shall be effective upon the date of execution of this MOA by the Commissioner of the Department of Property and Procurement and shall terminate one hundred and eighty (180) days thereafter.

### **3. COMPENSATION**

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Work), agrees to pay the Authority a sum not to exceed **Two Hundred Fifty-Five Thousand, Five Hundred Fifty Dollars and Zero Cents (\$255,550.00)** to be broken down as follows One Hundred and Eighty-Five Thousand, Two Hundred Seventy-Five Dollars and Zero Cents (\$185,275.00) for the Frederiksted Harbor Fish Market and Seventy Thousand Two Hundred Seventy-Five Dollars and Zero Cents (\$70,275.00) for the Roll-on/Roll-off Ramp at Krause Lagoon 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 **Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00)** for the Frederiksted Harbor Fish Market Project and **Six Thousand, Five Hundred Dollars and Zero Cents (\$6,500.00)** for the Roll-on/Roll-off Ramp at Krause Lagoon Project.

#### **5. RECORDS**

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

#### **6. PROFESSIONAL STANDARDS**

The Authority agrees to maintain the professional standards applicable to its profession and to similar contractors 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 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 the Authority or by any other person or entity except upon the written permission of the Government.

#### **8. ASSIGNMENT**

The Authority shall not subcontract or assign any part of the services under this MOA without the prior written consent of the Government. The Government consents to the Authority's use of Moffat and Nichol to assist the Contractor in completion of the Services.

#### **9. INDEMNIFICATION**

To the extent permitted by law, the Authority agrees to indemnify, defend and hold harmless the 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 the Authority under this MOA and arising from any cause, except the sole negligence of Government.



## **10. INDEPENDENT CONTRACTOR**

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

## **11. 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.

## **12. 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.

## **13. 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.

## **14. RIGHT TO WITHHOLD**

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 the Authority, 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 Authority 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 the Authority 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.

## **15. 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.

General Contract No. G017PNRT24

Initials: CA





## **16. TERMINATION**

Either party will have the right to terminate this Contract with or without cause on sixty (60) days written notice to the other party specifying the date of termination.

## **17. 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 sixty (60) days written notice to the Authority. This partial termination shall be effected by delivering to the Authority 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 Authority shall be entitled to receive payment for services provided to the date of termination, including payment for the period of sixty (60) day notice.

## **18. 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.

## **19. CONFLICT OF INTEREST**

The Authority 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.

## **20. NOTICE**

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**

LISA M. ALEJANDRO  
Commissioner  
Department of Property and Procurement  
8201 Subbase, Suite 4  
St. Thomas, VI 00802



JEAN-PIERRE L. ORIOL  
Commissioner  
Department of Planning and Natural Resources  
4611 Tutu Park Mall Suite 300  
St. Thomas, VI 00802

**VIRGIN ISLANDS PORT AUTHORITY**

CARLTON DOWE  
Executive Director  
Virgin Islands Port Authority  
PO BOX 301707  
St. Thomas, VI 00803

**21. LICENSURE**

The Authority covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise 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.

**22. OTHER PROVISIONS**

Addendum I (Scope of Work), Addendum II (Compensation) attached hereto are a part of this MOA and are incorporated herein by reference.

**23. DEBARMENT CERTIFICATION**

By execution of this MOA, the Authority 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. The Authority 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 Authority or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Authority or subcontractor agrees that it shall not be entitled to payment for any work performed under this MOA or any subcontract and that the Authority or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

**24. FALSE CLAIMS**

The Authority 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,

General Contract No. G017PNRT24

Initials: CR



commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. The Authority acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

## 25. NOTICE OF FEDERAL FUNDING

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

## 26. INSURANCE

The Authority shall ensure that its sub-contractor, Moffatt & Nichols maintain the following insurance coverages and that they be listed as the certificate holder during the term of this MOA

- (a) **COMMERCIAL GENERAL LIABILITY:** The public liability/commercial general liability insurance shall have a minimum limit of not less than one million dollars (\$1,000,000.00) for anyone per occurrence for death of personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage.
- (b) **PROFESSIONAL LIABILITY:** Professional liability insurance, which covers the services being performed under this MOA, with policy limits of no less than one million dollars (\$1,000,000.00) per any occurrence. The Authority shall be listed thereon as a certificate holder.
- (c) **WORKERS' COMPENSATION:** The Authority's subcontractor shall supply current coverage under the Government Insurance Fund or other forms of coverage to the Authority.

## 27. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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

The parties have hereunto set their hands on the day and year first above written.

[THIS SECTION LEFT INTENTIONALLY BLANK]

General Contract No. G017PNRT24

Initials: 



**GOVERNMENT OF THE VIRGIN ISLANDS**

*J. Oriol*

Jean-Pierre L. Oriol, Commissioner  
Department of Planning and Natural Resources

Date: 01-Feb-2024

*L. Alejandro*

MAN

Lisa M. Alejandro, Commissioner  
Department of Property and Procurement

Date: 2/23/2024

**VIRGIN ISLANDS PORT AUTHORITY**

*Carlton Dowe*

Carlton Dowe, Executive Director  
Virgin Islands Port Authority

Date: 01-30-24

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:

*David Ryan*  
Assistant Attorney General

Date: 2-23-2024

PURCHASE ORDER NO.

General Contract No. G017PNRT24

Initials: CD