

# **VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**

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**PFA-004-2024-STT**

## **INVITATION FOR BIDS FOR RENOVATION OF THE NINETY-NINE STEPS**

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### **ENCLOSURES:**

- a. Appendix A - Ninety-Nine Steps Project Manual
- b. Appendix B - Ninety-Nine Steps Drawings
- c. Appendix C - Non-Collusion Affidavit
- d. Appendix D - The Authority's Form Contract

## **SECTION 1.0 – INTRODUCTION: STATEMENT OF PURPOSE**

The Virgin Islands Public Finance Authority (the “Authority”) is seeking Bids to secure a Contractor to renovate the historic landmark on the island of St. Thomas known as the Ninety-Nine Steps.

## **SECTION 2.0 – RESOURCE DOCUMENTS**

Attached as to this IFB are the following DPW Documents

1. Appendix A- Ninety-Nine Steps Project Manual
2. Appendix B- Ninety-Nine Steps Drawings

## **SECTION 3.0. – SCOPE OF SERVICES**

The Authority is soliciting Competitive Bids for a Contractor to renovate the Ninety-Nine Steps in accordance with the above referenced Resource Documents. This procurement is being conducted in collaboration with the Department of Public Works (“DPW”).

The Ninety-Nine Steps (“the Steps”), which origins date back to the 18th century is one of a number of step streets, or “frigangs” as the Danes call them. The Ninety-Nine Steps staircase is one of several, and arguably the most popular, step-street built by the Danes, to solve the problem of getting around Charlotte Amalie’s hilly terrain. The foot of the famed ninety-nine step-street lies between Hotel 1829 and Government House and is directly across the street from the Authority’s Offices. The bricks of the Steps were brought from Denmark as ballasts in the hull of trade ships. The Steps original name was Store Taarne Gade, which means Greater Tower Street.

The close proximity of the Steps to the Offices of the Authority has given the Authority a unique perspective of how important this historic structure is to the Virgin Islands. Each day tourists visit this historical landmark to take videos and photographs

or simply to walk in the shoes of our ancestors, who used these Steps for over 250 years. The Steps also continue to serve their intended purpose of connecting the town and the hillside as residents and tourists alike continue to use them as a convenient and quick way to get to the center of town or for physical fitness activities.

This popular and historic landmark requires much needed renovations. Towards this end the Authority contacted the “DPW” for assistance. Per DPW’s assessment of the Steps, the work scope for the renovation, which is more specifically outlined in Appendices A and B to this IFB, entails:

- the removal of mortar layer on the steps & adjacent low side walls
- debris & grime removal on steps
- restoring/replacing step bricks
- removal & replacement of handrails
- installation of concrete pads for lighting
- swale clearing
- installation of solar lamp posts
- replacement of sewage lids, painting/refurbishing signage posts
- landscaping
- installation of bench seating
- other miscellaneous work

This procurement is being conducted in collaboration with the Department of Public Works (“DPW”).

#### **SECTION 4.0 – COST BID**

- a. **BID SCHEDULE-** Prices must be listed on the Bid Schedule as contained in Appendix A.
- b. **TAXES:-** The pricing proposed by the Bidder shall be the total consideration, inclusive of all applicable taxes, including but not limited to Virgin Islands

Gross Receipt Taxes. All taxes are the responsibility of the Bidder unless exempt by law. The Bidder is advised to contact the Virgin Islands Bureau of Internal Revenue (“IRB”), (340) 715-1040, for information on their tax obligations. Neither the Authority, nor its employees or representatives, shall be responsible for or liable due to any inquiries or representations regarding the Bidder’s tax liability to the Government of the Virgin Islands. To the extent a Bidder claims an exemption from any applicable taxes, Bidder must present valid written documentation of such.

Pursuant to 33 VIC § 44(a) (b) of the Virgin Islands Code as amended, the Government of the Virgin Islands and its instrumentalities, agencies and public corporations are required, when making a payment to any person, partnership, firm corporation or other business association that is subject to the payment of gross receipt taxes under the law, to deduct and withhold from such payment, gross receipt taxes as required by law at 33 VIC § 43 (a). Payment for the purposes of withholding is defined by law as:

1. Any single payment of at least \$30,000
2. Any payment pursuant to a contract providing for a total expenditure of \$225,000 or more.

The Authority will withhold gross receipt taxes in accordance with the above.

## **SECTION 5.0 – BID CONTENT**

Each Bidder must adhere to the requirements of this section relative to the bid package content and format in order to simplify the review process and facilitate the maximum degree of comparison. Bidder should ensure that the bid package closely follows the sequence and organizational outline described in this section. To be considered for award, the bid package shall meet the following requirements:

- a. Provide a narrative description of the Bidder itself, including the following: Bidder’s business identification information, including

name, business address, telephone number and website address. Federal taxpayer identification number or federal employer identification number to be provided within ten (10) days if bidder is selected. Also include description of Bidder's business background, including, if not an individual, Bidder's business organization (corporation, partnership, LLC, for-profit or not for profit, etc.), whether registered to do business in the Virgin Islands, and state of business formation, number of years in business, significant business experience, and any other information about Bidder's business organization that Bidder deems pertinent to this IFB.

- b. Primary contact for the person that will be executing this agreement , including name, job title, address, telephone and fax numbers, and e-mail address.
- c. Provide a statement of qualifications and capability necessary to carry out this project or to provide these services, including a list of comparable projects and identification of individuals (including their names, titles, organizations, mailing addresses, telephone, fax numbers, and e-mail addresses) who may be contacted with respect to each comparable project by providing the following:
- d. Provide adequate information demonstrating experience on at least three (3) projects of similar scope and magnitude. Project start/completion dates and owner/client reference must be included.
- e. Provide a Commitment Statement Letter – The Commitment Statement letter should be on the company's letterhead with contact information and must be signed by an officer of the organization that is authorized to bind the company contractually to all the commitments made in its submittal. The letter shall also include a statement of understanding for the work to be done. It shall state that the company will be solely responsible for all aspects of the engagement including any portion that may be performed by its subcontractor, if any. It should make a positive commitment to perform the work required as specified to industry standards of workmanship and in a professional manner. It should also state that the bid package will remain in effect for a period of ninety (90) calendar days from the submission deadline and thereafter, until the firm withdraws it, or a contract is approved and executed, or the procurement is canceled, whichever occurs first. Respondent shall also confirm that the company has not engaged in any unethical practices within the past five (5) years.

- f. State the intention to use subcontractors to perform any portion of the work sought by this IFB. For each such subcontractor, provide the name and address of the subcontractor, a description of the work Bidder intends the named subcontractor to provide.
- g. Attached the Non-Collusive Affidavit – Appendix C. The form must be notarized.
- h. Attach a copy of USVI Business License. For this section, Bidder must provide evidence that the company is currently licensed as a General Construction Contractor in the USVI. The Business License must be relevant to the Scope of Work for this solicitation.
- i. Attach a copy of Letter of Good Standing if Corporation or Certificate of Existence if LLC - The successful respondent will be required to provide a copy of their Letter of Good Standing or Certificate of Existence. A copy of the receipt that demonstrates evidence of filing the company's Annual Report on June 30th of the current Year from the Office of Lieutenant Governor will be acceptable as well.
- j. The successful respondent will be required to obtain, maintain and provide in place Insurance as set forth in the IFB. A copy of the required insurance certificates must be presented on or before contract execution.
- k. Provide the Bid Schedule as contained in Appendix A.
- l. Provide a description of the project plan and timeline for the Scope of Services of this IFB.
- m. State exceptions, if any, to the Authority's Contract Terms that Bidder requests, including reason for the request and any proposed additions to the contract.
- n. Attach Performance Bond Commitment letter.
- o. Provide a copy of the following Corporate Documents:
  - Corporation:
    - Copy of Articles of Incorporation & By-Laws
  - Limited Liability Company (LLC):
    - Copy of Articles of Organization
    - Copy of Operating Agreement

Sole Proprietor:

- Copy of Trade Name Certificate

## **SECTION 6.0 – NOTICE TO BIDDER TO STATE REQUESTED EXCEPTIONS TO CONTRACT TERMS**

The Authority's standard contract terms and conditions for services of the type sought by contracting opportunity (Contract Terms) are attached hereto and made a part of this IFB as Appendix D. By submitting a Bid in response to this contract opportunity, the Bidder agrees that, except as provided herein, it will enter into a contract with the Authority containing substantially the Contract Terms.

Bidder must state clearly and conspicuously any modifications, waivers, objections, or exceptions they seek ("Requested Exceptions") to the Contract Terms in a separate section of the Bid entitled "Requested Exceptions to Contract Terms." For each Requested Exception, the Bidder must identify the pertinent Contract Term by caption and section number and state the reasons for the request. The Bidder must also propose alternative language or terms for each Requested Exception. Requested Exceptions to the Authority's Contract Terms will be approved only when the Authority determines in its sole discretion that a Requested Exception makes business sense, does not pose unacceptable risk to the Authority, and is in the best interest of the Authority. By submitting its Bid, the Bidder agrees to accept all Contract Terms to which it does not expressly seek a Requested Exception in its Bid.

**If, after the Authority issues its Notice of Award to a Bidder, the Bidder seeks Requested Exceptions to Contract Terms that were not stated in its Bid, the Authority may, in its sole discretion, deny the Requested Exceptions without consideration or reject the Bid.**

The Authority reserves the right, in its sole discretion: (i) to waive any failure to comply with the terms of this IFB if it determines it is in the best interest of the Authority to do so; and (ii) to require or negotiate terms and conditions different from and/or additional to the Contract Terms in any final contract resulting from this contract opportunity, without notice to other Bidders and without affording other Bidder's any opportunity to revise their Bids based on such different or additional terms.

## **SECTION 7.0 – CONFIDENTIAL INFORMATION, TRADE SECRETS, AND PROPRIETARY INFORMATION**

Bids submitted in response to IFBs may contain trade secrets and/or privileged or confidential commercial (processes and techniques) or financial information (cost breakdown, profit, and indirect cost rates) which the Bidder (or his subcontractor) does



not want used or disclosed for any purpose other than evaluation of the Bid. The Authority assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. However, the Authority reserves the right to make any Bid, including proprietary information contained therein, available to its personnel, the Office of the Governor, or other VI Government agencies for the sole purpose of assisting the Authority in its evaluation of the Bid. The Authority shall require said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations.

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of your Bid. Bidder' cost Bid will not be considered confidential under any circumstance. Any Bid marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse. For the purposes of this procurement, the provisions of the Virgin Islands Public Records Act ( 3 V.I.C. § 881) will be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection, but only after the contract has been awarded. Bidders are reminded that while trade secrets and other proprietary information they submit in conjunction with this procurement may not be subject to public disclosure, protections of any confidential information must be claimed by the Bidder at the time of submission of its Bid. Bidder should refer to the Virgin Islands Public Records Act for further clarification. The Bidder must clearly designate the part of the Bid that contains a trade secret and/or privileged or confidential proprietary information as "Confidential" in order to claim protection, if any, from disclosure. The Bidder shall mark the cover sheet of the Bid with the following legend, specifying the specific section(s) of his Bid sought to be restricted in accordance with the conditions of the legend:

**"The data contained in pages \_\_\_\_ of the Bid have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Bidder as a result of or in connection with the submission of this Bid, the Authority shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit the Authority's right to use or disclose data obtained from any source, including the Bidder , without restrictions."**

Further, to protect such data, each page containing such data shall be specifically identified and marked "CONFIDENTIAL." If your Bid contains confidential information, you should also submit a redacted copy along with your Bid. If you do not submit the redacted copy, you will be required to submit this copy within 48 hours of notification from the Authority. When submitting your redacted copy, you should clearly mark the cover as such - "REDACTED COPY" - to avoid having this copy reviewed by an evaluation committee member. The redacted copy should also state which sections or information has been removed." Once it is determined that information is confidential or if a restraining order is issued, only the redacted copy is to be made available for public

inspection.

Bidders must be prepared to defend the reasons why the material should be held confidential. If a competing Bidder or other person seeks review or copies of another Bidder's confidential data, the Authority will notify the owner of the asserted data of the request. If the owner of the asserted data does not want the information disclosed, it must agree to indemnify and hold the Authority harmless against all actions or court proceedings that may ensue (including attorney's fees) which seek to order the Authority to disclose the information. If the owner of the asserted data refuses to indemnify and hold the Authority harmless, it may disclose the information.

### **SECTION 8.0 – ISSUING AND PROCURING PROCEDURES**

This IFB is being issued by the Virgin Islands Public Finance Authority.

Please refer all inquiries to: PFA-004-2024 [@usvipfa.com](mailto:PFA-004-2024@usvipfa.com)

From the issue date of this IFB until a determination is made regarding the selection of a Bidder in accordance with the bid schedule contained in the IFB, please refer all inquiries to **PFA-004-2024@usvipfa.com**. Any violation of this condition will be cause for the Authority to reject the Bidder's package. The Authority will not be responsible for any oral information given by any employees.

Failure to ask questions, request changes, or submit objections shall constitute the acceptance of all terms, conditions, and requirements in this IFB. Please submit all inquiries to:

**[PFA-004-2024@usvipfa.com](mailto:PFA-004-2024@usvipfa.com) by May 17, 2024 , no later than 4:00 p.m. AST.**

The issuance of a written addendum by the Authority is the only official method by which interpretation, clarification, or additional information can be given. If the Authority amends this IFB, it will post the addenda to all potential Bidder's to the Authority's website at [www.usvipfa.com/pfa.com](http://www.usvipfa.com/pfa.com) . Look for "Solicitations."

The Authority will not be held responsible if any potential Bidder does not provide current contact information to receive all addenda and conference information. It is the Bidder's responsibility to update all contact information and contact the Authority to ensure that they obtain all addenda before the submittal of the Bid package. The Bid package will be considered non-responsive if all modifications are not incorporated.

## **SECTION 9.0 – SUBMITTAL OF BIDS**

### **A. Bid Submittals**

This IFB is a request for the submission of proposals but is not itself an offer and shall under no circumstance be construed as an offer. The Authority reserves the following rights:

- to reject, without prejudice, any and all proposals submitted in response to this solicitation;
- to withdraw or modify this IFB any time, to accept or reject any or all submissions for any reason, to waive any irregularities or informalities in the Bid process;
- to re-issue all or parts of this IFB if it is not able to establish acceptable providers for any or all services;
- to terminate the IFB process at any time, if deemed to be in its best interest; to not to award a contract pursuant to the IFB.

Bids submitted in response to this solicitation become the property of the

Authority which may use any idea or concept in a submitted proposal, regardless of whether that proposal is selected for award

All procurement responses shall adhere to the requirements of the Authority's Bid request. All costs and expenses associated with developing and/or submitting a bid to this IFB or any related activity following the submission of any such response shall be borne by the Bidder. While the Authority has endeavored to supply useful information in this IFB, it makes no representation or warranty, expressed or implied, as to the accuracy or completeness of any information contained in this IFB or otherwise provided by any agent by or on behalf of the Authority. The Authority shall have no liability relating to or arising from any such information or the use thereof. Bidders are encouraged to conduct their own investigation and analysis of any and all information contained herein or otherwise provided by or on behalf of the Authority. All responses to this IFB are to be submitted, by email, to:

**PFA-004-2024@usvipfa.com no later than 4:00 p.m. AST on May 31, 2024**

The electronic submissions must include the Solicitation Number – in the Subject Line of the email as follows.

**PFA-004-2024/Name of Bidder**

The First Page of each electronic submission must also include the Solicitation Number and Due Date.

Email submissions must be clearly marked. Failure to clearly mark the email Bid package may cause the Authority to inadvertently open the email Bid package before the official closing date and time. Email submissions that are misdirected, or that are received after the date and time that IFBs are due will be considered LATE and will NOT be opened nor considered.

The Bid shall be signed by an official authorized to bind the Bidders and shall

contain a statement to the effect that the Bid is a firm offer for a ninety (90) day period. The Bid shall also provide the name, title, address, and telephone number of the individual(s) with authority to negotiate and contractually bind the company, and who also may be contacted during the period of contract.

The schedule for the IFB process are outlined below:

<b>IFB SCHEDULE</b>	<b>DATES</b>
<b>Issuance of the IFB</b>	<b>May 1, 2024</b>
<b>Prebid Conference/Site Inspection</b>	<b>May 10,2024 @ 10:00 a.m. VIPFA Conference Room (5033 Kongens Gade)</b>
<b>Questions Due</b>	<b>May 17, 2024</b>
<b>Responses to questions posted on Authority Website</b>	<b>May 24, 2024</b>
<b>Bid Submissions Due</b>	<b>May 31, 2024</b>
<b>Bid Selection</b>	<b>June 17, 2024</b>

**The Authority reserves the right to modify the schedule as circumstances warrant.**

## **B. Questions Relating to the IFB**

All questions concerning this IFB must be submitted in writing via email to [PFA-IFB-001-2024@usvipfa.com](mailto:PFA-IFB-001-2024@usvipfa.com) by the date stated in the IFB Schedule. The Authority will respond to questions it considers appropriate to the IFB by the date stated in the IFB Schedule. Responses will be posted on the Authority's website. Please look for the section entitled "Solicitations." Responses posted on this website become part of the IFB upon posting. No oral response to any Bidder questions by any Authority or DPW employee or agent shall be binding on the Authority or in any way considered to be a commitment by the Authority. **Contact with Authority or DPW regarding this IFB is not permitted and failure to comply with this restriction could result in disqualification.**

## **C. Selection/Rejection Procedures**

The Bidder whose submission is selected by the Authority will be notified in writing as to the selection. This letter should not be considered as a letter of award. A formal letter of award will be forthcoming at such time when mutual agreement has been reached by the parties on all issues pertaining to the application. Bidders whose submissions are not selected will also be notified in writing by the Authority.

## **SECTION 10.0 – PROJECTS COSTS**

A Bid must be provided based upon the Bid Schedule contained in Appendix A.

## **SECTION 11.0 – PERFORMANCE BOND**

- a. Should the cost of the project exceed \$250,000, bidder shall obtain a performance bond for 100% of the contract price from a surety or insurance company currently on the U.S. Department of the Treasury's Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a U.S.

- Virgin Islands domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide 10, or by an insurance company that is
- b. either domiciled in the U.S. Virgin Islands or owned by US. Virgin Islands residents and is licensed to write surety bonds.
  - c. A performance bond commitment letter evidencing bidders' ability to obtain a bond must be submitted with its bid. The Commitment letter shall contain a guarantee from the surety that it will, within fifteen days after execution of a contract, provide a bond in an amount as indicated in Authority's Contract Conditions, unless different terms are agreed to by the Authority. The Bond shall remain in effect throughout the entire duration of the Contract and for a period of not less than one (1) year after the Authority has accepted the Work. Any change to the Scope of Work resulting in an increase in the contract consideration will require the amount of the performance bond to be increased for the amount of the cost of the increase.
  - d. A copy of the performance bond must be presented to the Contracting Officer of the Authority on or before the issuance of the Notice to Proceed. Failure by Bidder to present its performance bond shall be grounds to terminate the Contract award.
  - e. Any bond provided must provide 100% of the contract price. The coverage of any and all changes that add to the scope of work.
  - f. All sureties providing bonds shall give written notice to the Authority at least thirty (30) days prior to the expiration or termination of the bond and Contractor must provide similar notice as soon as it has received.

## **SECTION 12.0 – LIQUIDATED DAMAGES**

Should the successful bidder fail to complete the scope of work according to the terms of the contract, the successful Respondent agrees to pay to the Authority , as liquidated damages, \$100.00 per day for each calendar day or portion thereof that the successful Respondent fails to commence or diligently perform the work in accordance with the contract

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

documents and/or is in violation of the contract. The liquidated damages shall first be deducted from any contract monies due but not yet paid to the successful Respondent, to the extent available.

**SECTION 13.0 – CONFLICT OF INTEREST**

A Bidder submitting its qualifications must fill and notarize out the non-collusion affidavit, Appendix C accompanying this IFB which certifies that no officer, agent or employee of the Authority and DPW, or subsidiary thereof has a pecuniary interest in its submission or has participated in submittal or the IFB or contract negotiations; that the submission is made in good faith without fraud, or connection of any kind with any other Bidder for the same request for qualifications; the Bidder is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

**SECTION 14.0 – EMPLOYEE CONFLICT PROVISION**

Employees and officials of the VI Public Finance Authority and DPW are prohibited from submitting a Bid in response to this IFB. No Bid will be considered in which a government employee or official has a direct or indirect interest.

**SECTION 15.0 – INSURANCE**

Bidder shall be responsible for maintaining, at its sole cost, during the life of the contract the following types of insurance with minimum acceptable limits as set forth below:

***LIMITS OF LIABILITY***

Commercial General Liability	\$2,000,000.00 per occurrence and in the aggregate
Unemployment Compensation	As required by Virgin Islands Law
Workers Compensation	As required by Virgin Islands Law
Automobile Insurance	\$2,000,000.00 combined single limit per accident

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_



The insurance carrier providing the required coverage shall (a) be licensed in the Virgin Islands; and (b) rated no lower than "A-" by the most recent A.M. Best's Key Rating Guide.

Liability policy shall be occurrence based. Claims-made policies are deemed rejected. Defense costs in all primary liability policies shall be "outside the limits," i.e., the full policy limits are available for damages.

Bidder will be obligated to mail or hand deliver to the Director of Finance and Administration, of the Virgin Island Public Finance Authority, a copy of any cancellation or non-renewal notice received from the insurer for any policy affording the coverages required herein within five (5) business days of receipt by Contractor. Notices by mail should be sent via Certified Mail return Receipt Requested as follows:

Director of Finance and Administration  
Virgin Islands Public Finance Authority  
P.O. Box 430  
St. Thomas, V.I. 00804

Bidder further agrees to provide the Authority with 30 days' advance written notice of any material reduction in coverage initiated by Bidder with respect to any of the required insurance coverages. For the purpose of this provision, material reduction in coverage shall mean any change or reduction in the scope of insurance coverage that adversely affects the protection that would otherwise be available to the Authority .

The Bidder shall supply a certificate of insurance evidencing such required insurance coverage within fifteen (15) days of execution of the contract failing which this Contract, at the option of the Authority may be considered voidable, or may be terminated by the Authority.

The Commercial General and any Excess or Umbrella Liability policy shall be endorsed to name the Authority as an additional insured. Bidder shall provide the Authority with a certificate of insurance signed by an authorized officer of the insurance company or its

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

authorized representative. The certificate shall show:

- The name of the insurance company
- The policy period
- The policy number
- Description of the coverage
- The name of the seller/policyholder
- The Authority as an additional insurance.

### **SECTION 16.0 – SELECTION PROCESS**

The Evaluation Committee is responsible for evaluating all Bidders' submittals, and will utilize the Bid Schedule contained in Appendix A -Ninety-Nine Steps Project Manual . The award will be made to the lowest most responsive, responsible bidder.

### **SECTION 17.0 – CONFIDENTIALITY OF INFORMATION RECEIVED BY BIDDERS**

The Bidder shall treat all information obtained from the Authority during the Bid process and while conducting that scope of services herein, that is not generally available to the public as confidential and/or proprietary. Bidders shall exercise all reasonable precautions to prevent any information derived from being disclosed to any other person. agrees to indemnify and hold harmless the Authority its officials and employees, from and against all liability, demands, claims, suits, losses, damages, causes of action, fines, and judgments (including attorney's fees) resulting from any use or disclosure of such confidential and/or proprietary information by the Bidder or any person acquiring such information, directly or indirectly, from the Bidder.

Written approval is required to disseminate any Confidential Information from:

Director of Finance and Administration  
Virgin Islands Public Finance Authority  
P.O. Box 430  
St. Thomas, V.I. 00804

### **SECTION 18.0 RECORD RETENTION**

Bidder shall maintain records applicable to the contract. All such records are to be retained for three (3) years after final payment is made.

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

**SECTION 19.0 EXECUTED CONTRACT TO INCLUDE IFB**

The requirements of this IFB (including all attachments, revisions, addendums, and additions) shall become part of the Bidder's Contract.

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

**ENCLOSURE DOCUMENT APPENDIX A  
ATTACHED**  
VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY

**DPW NINETY-NINE STEPS PROJECT MANUAL**

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

**APPENDIX B**  
**ATTACHED**  
VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY

**DPW DRAWINGS**

**ENCLOSURE DOCUMENT APPENDIX C**  
VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

**NON-COLLUSIVE AFFIDAVIT**

\_\_\_\_\_, being first duly sworn, deposes and says:

That he/she is \_\_\_\_\_ (a partner or officer of the firm of, etc.), the party making the foregoing Bid or Bid cost, that such Bid or Bid cost is genuine and not collusive or sham; that said proponent has not colluded, conspired, connived or agreed directly or indirectly, with any proponent or person, to put in a sham Bid cost or to refrain from bidding and has not in any manner directly or indirectly sought by agreement or collusion or communication or conference, with any person, to fix the Bid cost of the affinity or any other proponent, or to fix any overhead, profit or cost element of said cost Bid, or of that of any other proponent, or to secure any advantage against the Virgin Islands Public Finance Authority, Department of Public Works, Government of the Virgin Islands, or any person interested in the proposed contract; that no officer, agent or employee of the Authority, and any Division therein or subsidiary thereof has a pecuniary interest in its Bid or has participated in contract negotiations, and that all statements in said Bid or cost Bid are true.

\_\_\_\_\_  
(Name of Bidder if the Bidder is a corporation)

\_\_\_\_\_  
(Name of Bidder if the Bidder is a Limited Liability Corporation)

\_\_\_\_\_  
(Name of the Bidder if the Bidder is a Sole Proprietor)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by  
\_\_\_\_\_ of legal age,

\_\_\_\_\_  
(Trade or Corporation)

and personally, known to me.

(SEAL)

\_\_\_\_\_  
Notary Public

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

**ENCLOSURE DOCUMENT APPENDIX C**  
**VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**  
**FORM CONTRACT**



Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

## NINETY-NINE STEPS RENOVATION CONTRACT

Between The

VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY

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THIS CONTRACT is made as of the \_\_\_ day of \_\_\_\_\_ 2023, by and between the VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY, an autonomous instrumentality of the Territory of the United States Virgin Islands, having its principal place of \_\_\_\_\_ St. Thomas, U.S. Virgin Islands 00802 (hereinafter the "Authority"), and \_\_\_\_\_ whose address is # \_\_\_\_\_ (hereinafter the "Contractor"). The Authority and the Contractor shall hereinafter be jointly referred to as the "Parties."

### WITNESSETH

**WHEREAS**, the Authority is in need of the services of a Contractor to renovate the Ninety-Nine Steps, located at Store Taarne Gade, on Government Hill ( hereinafter the "Property") on St. Thomas, Virgin Islands; and

**WHEREAS**, the services are more particularly described in Appendices "A" and "B" which are attached hereto and incorporated herein; 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 Contract, the Parties hereto do covenant and agree as follows:

#### 1. SCOPE OF WORK:

- a. The Contractor shall renovate the Ninety-Nine Steps ( hereinafter referred to as the "Scope of Work" or the "Work") . The Work includes, but is not limited to: the removal of mortar layer on the steps & adjacent low side walls ,debris & grime removal on steps, restoring/replacing step bricks ,removal & replacement of handrails installation of concrete pads for lighting, swale clearing, installation of solar lamp posts , replacement of sewage lids, painting/refurbishing signage posts , landscaping , and installation of bench seating, and other miscellaneous work, All Work shall be performed in accordance with the Scope of Work as

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_



outlined in Appendices A and B, Bid Schedule, and the direction of the Project Architect/ Engineer in writing. The Contractor agrees to furnish all labor, equipment, materials and services necessary to perform and complete the work. The Authority and the Contractor may agree to changes in or additions to the Scope of Work. However, no changes shall be valid unless in writing and signed by both parties in the form of an executed Change Order.

- b. The Contractor shall furnish and maintain at the Site a competent resident supervisory representative who shall have the title of Project Manager: Provided that the Authority shall have the right to require the removal from the Site of any employee of the Contractor of any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interest of the Authority.
- c. The Contractor shall be responsible for initiating and maintaining safety precautions and programs and supervising its personnel to ensure the safe performance of the Work. The Contractor shall, furthermore, provide all its personnel with sufficient and appropriate safety devices.
- d. The Contractor shall be locating any underground utilities that may be at the Work Site during the performance of the Work.
- e. The Contractor shall provide the Authority and its representative from DPW reasonable access at all times to work in progress at the Site, and the Contractor shall provide sufficient, safe and proper facilities for such access and inspection, the being understood that such access shall not unreasonably interfere with the orderly completion of the Work by the Contractor.
- f. The Contractor shall prepare and furnish to the Authority at a time mutually agreed to by the Parties, after the effective date of the Contract an estimated construction schedule in a form satisfactory to the Authority and thereafter, progress reports of the Work at intervals as required by the Authority. When requested by the Authority, the Contractor shall furnish the underlying documents used in the preparation of any progress report including estimated material and equipment, procurement, manufacturing, shipping, installation and renovation schedules: Provided that if, in the judgment of the Contractor, furnishing copies would involve inordinate expense the Authority may be provided access to such documents instead.

2. **TERM:**

- a. The Contractor agrees that time is of the essence. The Contract shall commence upon full and final execution by the Parties. Contractor will commence work no less than Ten (10) days after the issuance of the Notice to Proceed. The Contract shall terminate on the dates stated in the Notice to Proceed unless sooner terminated in accordance with Paragraphs 25 or 26 (Termination) or otherwise extended by mutual agreement of the Parties.
- b. All work shall be completed no later than the date stated in the Notice to Proceed. The performance period shall not include travel days associated with holidays for which Contractor's employees are traveling home. The Authority shall extend the completion date if there are delays caused by acts of Nature, unavoidable circumstances, or the negligence of the Authority or its

Contractor: \_\_\_\_\_

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agents or employees other than the Contractor. For purposes of the forgoing sentence, unavoidable delay shall include delays related to or caused by unavailability of materials. The Contractor shall advise the Authority upon the occurrence of delays, but no later than five (5) workdays after such occurrence. The extension shall equal the length of the delay by any of the above factors. However, there shall be no extensions to the completion date without the prior written consent of the Authority. The Authority reserves the right to modify and/or terminate the Contract if the Contractor fails to perform in a manner consistent with the terms of the Contract.

**3. COMPENSATION:**

The Authority, in consideration of the satisfactory performance of the services described in Addendums I, agrees to pay the Contractor the sum of \$ \_\_\_\_ The payment shall be made as follows:

- a. Pre-Construction Cost: 10% of the total Contract Amount, which is:  
to secure the necessary equipment, labor and materials to begin the project, based upon the Scope of Work ( Addendum III) and should be paid within five (5) days of the issuance of the Notice to Proceed. Contractors are required to submit receipts and other supporting documentation, as required, to demonstrate costs incurred, failing which the Authority may withhold such amounts from subsequent payments until Contractor has provided the necessary receipts or documentation. Contractor shall be notified of any withholding per the notice requirement as outlined in Paragraph 35 of this Contract.
- b. Thereafter, Contractor shall submit monthly draws for work performed during that period, which draw shall be supported by receipts and other supporting documents as agreed upon by the Parties for work performed during any given month.
- c. 10% is withheld from each draw for retainage, excluding pre-construction cost. Also withheld will be any applicable gross receipts taxes.
- d. Any Retainage due the Contractor for work performed and the final payment will be disbursed at the completion of the Work, subject to a Final Inspection and acceptance of the work as outlined in Paragraph 32.

Contractor: \_\_\_\_

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**4. LIQUIDATED DAMAGES:**

It is hereby agreed by the Parties that in the event the Contractor has not completed the Work under the terms set forth in this Contract, liquidated damages of \$\_\_\_\_\_ for each workday or portion thereof shall be due to the Authority. The liquidated damages shall be deducted from any contract monies due but not yet paid, to the extent available. Contractor shall be notified of the application of Liquidated Damages and the amount of such deductions in accordance with the Notice requirement of this contract as outlined in Paragraph 41 of the Contract. Should the Liquidated Damages exceed the Contract Amount Contractor shall pay the balance or amount of any liquidated damages due upon thirty (30) day's written notice from the Authority.

**5. PERFORMANCE BOND:**

If applicable, the undersigned further agrees to execute and deliver to the Authority at the time the contract documents are executed, a Performance Bond on the forms provided, in an amount of \$\_\_\_\_\_ by a surety or insurance company currently on the U.S. Department of the Treasury's Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a U.S. Virgin Islands domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide 10, or by an insurance company that is either domiciled in the U.S. Virgin Islands or owned by US. Virgin Islands residents and is licensed to write surety bonds.

**6. PAYMENT PROCESS:**

- a. Invoices shall be submitted on a timely basis. Invoices shall be organized so that services associated with each construction phase are clearly identified in separate detailed listings of charges. Payment of invoices must be approved by the Authority or its designee after inspection. The Authority will make payments within thirty (30) days after invoice approval and acceptance of work after the inspections noted in Paragraph(s) 31 and 32.
- b. Should the Contractor, after receipt of payment of invoices by the Authority not timely pay all persons who have fulfilled their obligations to perform labor and/or furnish materials in the prosecution of the work provided for herein, including by way of example workmen, laborers, furnishers of materials, machinery, equipment and fixtures, then Contractor agrees to indemnify and hold the Authority harmless against any claims made against the Authority for such payment(s). Timely payments from Contractor to its subcontractors shall mean that the Contractor shall remit payments to its subcontractor within ten (10) business days of receiving payment from the Authority. Pursuant to Paragraph 14, Contractor shall obtain an executed lien waiver upon making final payments to all persons who have fulfilled their obligation to perform labor and/or furnish materials in the prosecution of the work provided herein. Such forms shall be submitted to the Authority before final payment shall be disbursed.
- c.

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_

**7. WORKMANSHIP/WARRANTY:**

The Contractor will complete all work in a skillful manner according to standards and practices in the Contractor’s trade for the Work to be performed. The Work shall conform to all applicable codes and regulations which apply to the work to be performed whether or not covered by the specifications and drawings for the work. The Contractor warrants that the final product of Contractor's Work shall be fit for the purposes for which it is intended. Contractor will warrant against defects in materials and labor for a period of One (1) year from the date of completion and upon acceptance of the work by the Authority.

**8. DEFECTIVE WORK:**

The inspection of work shall not relieve the Contractor of any of its obligations to fulfill the terms and conditions of the Contract as herein prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the Authority’s Project Manager and accepted or paid for. If the work or any part thereof shall be found defective at any time before the final acceptance of the whole work, or the final payment therefor, the Contractor shall forthwith make good such defect in a manner satisfactory to the Authority’s Project Manager and shall replace at its own expense damaged or unsuitable materials with the new material of satisfactory quality.

**9. CONTRACT CHANGES:**

The Contract shall be completed on or before the date of completion as set forth in the Contract ; and the Authority has accepted all work. The Contracting Officer may at any time and without notice to the sureties issue a written request for changes in the Work if within the general scope. Within the time specified in the request but not later than fifteen (15 ) days after the receipt, or such other reasonable time as agreed to by the Parties, the Contractor shall submit an estimate of the effect of the changes, if any, upon the Contract price, the completion date, or other Conditions of the Contract. The changes shall be put into effect upon mutual written agreement of the parties. Compensation, for changes, or extensions of the completion date because of changes, or other modifications of the Contract due to change shall be set forth in Contract change orders or amendment which must be fully executed prior to undertaking the changes to the Work. No allowance shall be made for unauthorized delays or suspension of the work.

The Authority reserves the right to remove any one of the bid items from the scope of work for the exact value noted in the bid schedule throughout the duration of the project if necessary.

**10.ACCEPTANCE OF PLANS AND CONSENT TO PERFORM THE PROJECT:**

Contractor hereby acknowledges that it has been presented the Scope of Work (“SOW”) for the Project. Contractor has fully reviewed the SOW, which specifies the construction and other activities, attached hereto as “Addendum III,” to be conducted by Contractor on the Property. Contractor acknowledges and agrees that it shall not add tasks to the Work unless authorized by the Authority in writing.

Contractor: \_\_\_\_\_

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**11.CONTRACTOR’S REPRESENTATIONS:**

The Contractor warrants that it is fully informed regarding all the conditions affecting the work to be done and labor and materials to be furnished for the completion of the Contract. Contractor further represents that it is fully equipped, competent, and capable of performing the work and is available to perform such work.

The Contractor shall include this provision in each of its subcontracts hereunder, a copy of which shall be provided to the Authority upon execution.

**REPRESENTATIONS, WARRANTIES, AND COVENANTS BY CONTRACTOR:**

The Contractor represents, warrants, and covenants as follows:

- (a) Contractor is duly organized and existing and authorized, qualified and licensed to do business in the United States Virgin Islands.
- (b) Contractor will, during the construction period of the project, remain a General Contractor, engaged in the services to be performed pursuant to this contract , will remain in good standing and qualified to do business under the laws of the Territory, shall at all times possess a valid V.I. business license, and will not cease doing business, dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it.
- (c) Contractor has the power to execute, deliver and perform, and enter into the transactions contemplated by this Agreement, and has duly authorized the execution, delivery, and performance of this Agreement.
- (d) The execution and delivery of this Agreement, the consummation of the transaction contemplated hereby and the fulfillment or compliance with the terms and conditions of this Agreement do not and will not conflict with or result in a breach of any of the terms, conditions, or provisions of any legal restrictions or any agreement or instrument to which the Contractor is now a party or by which it is bound or constitute a default under any of the foregoing.
- (e) No information, statement, or report furnished in writing by the Contractor in connection with the negotiation of, or performance under, this Agreement and the consummation of the transactions contemplated hereby contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading.
- (f) That it has obtained all the applicable licenses or permits, 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.

Contractor: \_\_\_\_\_

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**12.CONDITION OF PREMISES:**

The Contractor agrees to keep the Premises orderly, and to remove daily all debris as needed during the Project in order to maintain safe working conditions and leave the area in a neat and clean condition. The Contractor agrees to maintain the work area free from major obstructions/hazards to the greatest extent possible and to ensure safe access at all times.

**13.CONTRACTOR, MATERIALMEN OR MECHANICS' LIENS:**

The Authority will not suffer or permit any mechanics or materialmen's liens to be filed or otherwise asserted against the Property or against any funds due to Contractor and will promptly seek discharge of any such lien filed. Contractor, subcontractors, suppliers, vendors, trades and any other persons or entities performing work on the Property are strictly prohibited from placing liens on said Property. Contractor shall inform all persons or entities of such strict prohibition. Contractor is responsible for the removal, and any associated expense involved therewith, of any lien placed on the subject Property by the Contractor, or any subcontractor, supplier, vendor, trade or other person or entity performing work for the Contractor, irrespective of the fault or cause of such attachment.

Additionally, pursuant to V.I. Code Title 28, Chapter 12, Section 254 "a construction lien does not exist for work, services, materials, or equipment, in connection with the improvement of a residential dwelling under an emergency home repair program property or other home-repair or construction program administered by the Government of the Virgin Islands or any instrumentality of the Government of the Virgin Islands".

**14.LIEN WAIVERS:**

The Contractor agrees to protect, defend and indemnify the Authority from any claims for unpaid work, labor or materials with respect to the Contractor's performance under this Contract and shall execute a Lien Waiver, from both the Contractor and all subcontractors, upon receipt of each payment. Final payment shall not be due until the Contractor has delivered to the Authority a complete release of all liens for work completed arising out of Contractor's Performance or a receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to the Authority indemnifying the Authority against any and all liens.

**15.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. The Contractor shall be responsible for the supervision of Contractor's employees, subcontractors, and authorized representatives. All workers must be competent and skilled in their work.

Contractor: \_\_\_\_\_

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**16.LIABILITY OF OTHERS:**

Nothing in this Contract shall be construed to impose any liability upon the Authority to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Authority 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 and social security taxes for Contractor its servants, agents, or independent contractors.

**17. FORCE MAJEURE:**

Neither Party shall be liable for any delay or failure in performance beyond its control resulting from Acts of God or force majeure (extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of hazardous materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party). The Parties shall use reasonable efforts to eliminate or minimize the effect of such events on their respective duties under the Contract. Contractor shall be entitled to an equitable adjustment in its prices in the foregoing circumstances.

**18. INDEMNITY**

Contractor shall be fully liable for the actions of its agents, employees, partners or sub-contractors and shall fully indemnify and hold harmless the Authority, its Board of Directors, the Department of Public Works and its agents and employees, from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, its agents, employees, partners or sub-contractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authority.

Contractor shall agree to defend, indemnify and hold the Authority, its Board of Directors, the Department of Public Works and its agents and employees, harmless from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges, and expense (including attorneys' fees) and causes of action of whatsoever character which the Authority 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 the Authority. Contractor shall, on or before contract execution, provide the Authority with a copy of Contractor's insurance certificate evidencing coverage for liability and personal injury.

Contractor will indemnify, defend and hold the Authority, its Board of Directors, the Department of Public Works, its agents and employees, harmless, without limitation, from and against any and all damages,

Contractor: \_\_\_\_\_

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expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs for infringement of a United States Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the Authority shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Authority or its Board of Directors, agents and employees may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Authority shall require.

Unless otherwise specifically enumerated herein neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The Authority may, in addition to other remedies available at law or equity and upon notice to the Contractor per Paragraph 35 of this Contract, retain such monies from amounts due Contractor, as may be necessary to satisfy any claim for damages, penalties, or costs asserted by or against them.

**19. INSURANCE AND BONDING:**

Contractor agrees to maintain, at its sole cost, during the life of the contract the following types of insurance with minimum limits as set forth below:

<i>INSURANCE TYPE</i>	<i>LIMITS OF LIABILITY</i>
Commercial General Liability	\$2,000,000.00 per occurrence and in the aggregate
Unemployment Compensation	As required by Virgin Islands law
Workers Compensation	As required by Virgin Islands law
Automobile Insurance	\$2,000,000.00 combined limit per occurrence

The insurance carriers providing the required coverages shall (a) be licensed in the state where Bidder is headquartered, (b) rated no lower than "A-" by the most recent Best's Key Rating Guide, and (c) have a Best's Financial Size Category of not less than VIII, unless otherwise agreed to by the Authority. Liability policy shall be "occurrence-based" policies. Claims-made policies are deemed rejected.

Defense costs in all primary liability policies shall be "outside the limit," i.e., the full policy limits are for the payment of damages.

Contractor: \_\_\_\_\_

Authority: \_\_\_\_\_



The Commercial General and any Excess or Umbrella Liability policy shall be endorsed to name the Authority as an additional insured. Any such policy shall contain language that: "Such insurance as afforded by this policy for the benefit of the Authority shall be primary as respect to any claims,

losses, damages, expenses or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by the Authority shall be excess of and noncontributing with insurance afforded by this policy."

## **20. VERIFICATION OF COVERAGE:**

Contractor shall furnish the Authority with certificates of insurance reflecting proof of required coverage. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and the certificates are to be submitted on or before Contract execution and approved by the Authority before work commences.

Upon failure of the Contractor to furnish, deliver and maintain such insurance as herein provided, this contract, at the election of the Authority may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

Contractor shall include all subcontractors as insureds under its policies or shall be responsible for verifying and maintaining the certificates provided by each Subcontractor. Subcontractors shall be subject to all of the requirements of the Authority herein. The Authority reserves the right to request copies of subcontractor's insurance certificates at any time.

Contractor shall notify and provide the Authority with a copy of any cancellation or non-renewal notice received from the insurer for any policy required herein within five (5) days of Contractor's receipt of same. Contractor further agrees to provide the Authority with 30 days advance written notice of cancellation, non-renewal or material reduction in coverage initiated by Contractor with respect to any of the required insurance coverages. For the purpose of this provision, material reduction in coverage shall mean any change or reduction in the scope of insurance coverage that adversely affects the protection that would otherwise be available to the Authority.

## **21. SUB-CONTRACTOR:**

Contractor may enter into one layer of subcontracts with third parties ("Sub- Contractors") for the performance of any part of specialized Contractor's duties and obligations (i.e. electrical, plumbing, etc.). In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to the Authority for any breach in the performance of Contractor's duties. Sub- Contractor's Contracts must meet all contracting, indemnity, insurance and regulatory compliance requirements. The Parties hereby agree that any non-compete Contract or similar Contract with any Sub- Contractor(s) seeking to restrain the ability of the Sub-Contractor to

perform any services for the Authority shall be deemed unenforceable, invalid, to the extent of such non-compete provision, but without invalidating the remaining provisions of the contract

with the Sub-Contractor.

## **22. ASSIGNMENT OF THE CONTRACT :**

The Contractor shall not subcontract or assign this Contract without the prior written consent of the Authority.

## **23. 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, condition 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.

## **24. RIGHT TO WITHHOLD:**

If work under this Contract is not performed in accordance with the terms hereof, the Authority will have the right to withhold, out of any payment due to Contractor, such sums as the Authority may deem ample to protect it against loss or to assure payment of claims arising therefrom, and at its option, the Authority may apply such sums in such manner as the Authority may deem proper to secure itself or to satisfy such claims. The Authority will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

## **25. TERMINATION FOR CONVENIENCE:**

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.

## **26. TERMINATION FOR CAUSE:**

(a) Except as hereafter provided, the Authority shall have the immediate and automatic right to terminate this Agreement upon the occurrence by Contractor of a material breach of any

term, condition, representation, warranty or covenant of this Agreement, or the Proposal.

A material breach shall include, but not be limited to, the following, if applicable: (1) submission to the Authority of reports which are incorrect or incomplete in any material respect; (2) failure to pay creditors and subcontractors which may cause the placement of liens on the Authority's property; (3) failure to maintain any bonds, licenses and insurance if required under this Agreement; (4) abandonment of the Work by Contractor for a period of seven (7) days; (5) failure to diligently obtain skill specific permits and approvals for the Project; (6) if the Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of creditors, or if a trustee or receiver is appointed on account of its insolvency; (6) if the Contractor persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials; (7) failure to correct work which is not in accordance with the final construction drawings and specifications; or (8) persistent disregard of the laws, rules, regulations or orders of any public authority having jurisdiction; (9) failure to utilize industry standards in a method or installation; (10) failure to comply with the approved Scope of Work by adding items without approval or by failing to provide materials and/or workmanship in accordance with the Plan; and (11) failure to adhere to the standards required by the Contract.

- (b) **PARTIAL TERMINATION:** The performance of work under this Contract may be terminated by the Authority in part, whenever the Authority shall deem such termination advisable. This partial termination shall be affected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties of 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 thirty (30) days' notice.

## **27. 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, religion, sexual orientation, or national origin.

## **28. FALSE CLAIMS:**

- (a) The Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Authority. The Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.
- (b) The 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 false, fictitious, or fraudulent claim is a federal offense.

**29. 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 perform under this Contract.

**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, 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 Contractor 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 the Authority 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.

**31. PRELIMINARY INSPECTION(S):**

All work will be subject to periodic inspections by the Authority or the Authority's designee. Prior to request for final inspection, the Contractor shall notify the Authority's Project Manager of the anticipated date of completion so that any major defects or deficiencies may be pointed out to the Contractor for correction prior to the final inspection.

**32. FINAL INSPECTION:**

The Scope of Work shall be considered complete upon acceptance by the Authority after a final inspection conducted by the Authority. Once requested by Contractor, final inspection shall be initiated within two (2) business days and the time period between request for final inspection and completion of final inspection shall not be counted against the agreed upon period of performance.

**33.RECORDS:**

The Contractor shall maintain documented, precise records of time and/or money expended under this Contract for a period of three years, and shall furnish copies of same to the Authority at its request.

**34.AMENDMENTS:**

(a) No amendment(s), modifications, or changes shall be made to this Contract unless Contractor delivers such proposed amendment(s) to the Authority for approval prior to the execution of the Amendment to the Contract.

(b) Amendments must make specific reference to this Contract, must be in writing, and signed by a duly authorized representative of the parties of this Contract. Such amendments shall not invalidate this Contract, nor relieve or release Contractor from its obligations under the Agreement or the Contractor from its obligations under this Contract.

**35. NOTICE:**

Any notices required or permits to be given under this Contract shall be deemed sufficiently given or served if sent by certified mail, return receipt requested to the parties at the following addresses:

Authority: Virgin Islands Public Finance Authority

Attention: Nathan Simmonds, Director

Contractor:

Attention:

Either Party may, by like notice, at any time and from time to time, designate different addresses to which notices shall be sent. Notices given in accordance with these provisions shall be deemed received when mailed.

### **36. 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.

### **37. GROSS RECEIPT TAXES:**

Title 33 V.I.C. Ch.3, §44, as amended<sup>1</sup>, requires the Authority, 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, the Authority 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.

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.

### **38. 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.

<sup>1</sup> (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.

For purposes of withholding under this section, “payment” is defined as the following:

- a. any single payment of at least \$30,000; and
- b. any payment pursuant to a contract providing for a total expenditure of \$225,000 or more.

**39. ENTIRE CONTRACT:**

This Contract constitutes the entire Contract between the parties hereto, and all prior understandings or communications, written or oral, with respect to the work to be done under this contract, are merged herein.

**40. COUNTERPARTS:**

This Contract may be signed in counterparts, each of which will be deemed an original.

**41. GOVERNING LAW AND VENUE:**

This Contract shall be governed by and construed in accordance with the laws of the Territory of the United States Virgin Islands and venue shall be in the United States Virgin Islands. Venue for any action between the Authority and Contractor which relates to this Contract shall be in the United States Virgin Islands.

**THIS SPACE LEFT INTENTIONALLY BLANK**

**IN WITNESS WHEREOF**, the parties intending to be legally bound hereby, caused these presents to be executed as of the day and date first above written.

**WITNESS:  
AUTHORITY**

**VIRGIN ISLANDS PUBLIC FINANCE**

\_\_\_\_\_

\_\_\_\_\_  
Nathan Simmonds Date  
Director of Finance and Administration

\_\_\_\_\_

**CONTRACTOR**

\_\_\_\_\_

\_\_\_\_\_  
NAME Date  
TITLE

\_\_\_\_\_

Approved for Legal Sufficiency:

\_\_\_\_\_  
Staff Counsel