CONSTRUCTION CONTRACT

THIS AGREEMENT is made this 29th day of April, 2019 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 Heights Construction and Supply, LLC (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of a contractor to furnish all labor, materials and equipment necessary for the **Estate Calquohoun Drainage Improvement in the Vicinity of Plot 17-4, Frederiksted, St. Croix, Virgin Islands** in strict accordance with the plans and specifications (incorporated by reference and made a part of this contract), which duties and responsibilities are more particularly described in ***Addendum I***, (Scope of Work), ***Addendum II*** (General Provisions and Warranties together with the additional General Provisions – Construction), ***Addendum III*** (Termination of Contracts), and ***Addendum IV*** (Compensation) attached hereto; and

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

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

1. **SERVICES**

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

2. **TERM**

This Contract shall commence upon execution by the Governor and shall terminate within **sixty (60)** calendar days thereafter, or in accordance with an agreed upon extension pursuant to the General Provisions. Particular reference should be made to the Notice to Proceed.

3. **COMPENSATION**

The Government, in consideration of satisfactory performance of the services described in Addendum I, agrees to pay the Contractor the sum of **Eighty Five Thousand Seven Hundred Thirty Nine Dollars and No Cents ($85,739.00)** in accordance with the provisions set forth in

Addendum IV (Compensation), attached hereto is hereby incorporated by reference and made a part of this contract.

4. LIQUIDATED DAMAGES

It is hereby expressly agreed by the parties hereto that in the event the Contractor has not completed the scope of work under the term set forth in Paragraph 2 hereof, liquidated damages of **seventy five dollars ($75.00)** for each calendar day or portion thereof shall be due the Government. The liquidated damages shall first be deducted from any contract monies due, but not yet paid to the extent available.

5. RECORDS

The Contractor 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 Contractors doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

Certified copies of all documents, books, records, instructional materials, programs, printouts and memoranda of every description derived

therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract, or at the Government's request, during the life of the contract. The above-described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

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

9. ASSIGNMENT

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

10. INDEMNIFICATION

Contractor agrees to indemnify, defend, and hold harmless the Government from and against any and all loss, damage, liability, claims,

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

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 and venue are exclusive 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 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 the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

16. **CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

17. **TERMINATION**

Either Party will have the right to terminate this contract with cause on ten (10) days written notice to the other party specifying the date of termination. The attached "Addendum III - Termination of Contracts for the Convenience of the Government" is hereby fully incorporated herein by reference and is made a part of this agreement.

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. 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 ten (10) days notice.

19. **NON-DISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

20. **CONFLICT OF INTEREST**

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to perform under this Contract.

(b) Contractor further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive, or judicial branch of the Government or any agency, board, commission, or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

(i) familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to

conflicts of interest, including the penalties provisions set forth in section 1108 thereof;

(ii) not made, negotiated or influenced this contract, in its official capacity;

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

21. **EFFECTIVE DATE**

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

22. **NOTICE**

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Anthony D. Thomas
Commissioner Nominee
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas, VI 00802

Nelson M. Petty, Jr., P.E.
Commissioner Nominee
Department of Public Works
8244 Sub Base
St. Thomas, VI 00802

CONTRACTOR **Elroy Swanston**
President
Heights Construction and Supply, LLC
P.O. Box 1818
Kingshill, VI 00851

23. LICENSURE

The Contractor covenants that it has:

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

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

24. CONTRACTOR'S REPRESENTATIONS

The Contractor agrees that he 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, and that he has been engaged in and now does such work and represents that he is fully equipped, competent, and capable of performing the work and is ready and willing to perform such work.

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

The Work shall be done under the direct supervision of the Government, and in accordance with the laws of the Government and it Rules and Regulations thereunder issued and any and all applicable federal rules and regulations. The parties hereto agree that this contract shall, in all instances, be governed by the Laws of the Government of the Virgin Islands.

25. WARRANTY OF NON-SOLICITATION

The Contractor expressly warrants that he has employed no person to solicit or obtain this contract on his behalf, or to cause or procure the same to be obtained upon compensation in any way, contingent, in whole or in part, upon such procurement, and that he has not paid, or promised or agreed to pay to any person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by him hereunder; and that he has not, in estimating the contract price demanded by him included any sum by reason of such brokerage, commission or percentage; and that all monies payable to him hereunder are free from obligation to any

other person for services rendered, or supposed to have been rendered, in the procurement of this contract.

Breach of the warranty shall give the Government the right to terminate this Contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees.

26. FALSE CLAIMS

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

27. OTHER PROVISIONS

Addendum II (General Provisions and Warranties) and Addendum III (Termination of Contracts) attached hereto are hereby incorporated by reference and made a part of this contract.

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

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

_____ _____ **Date:** 4.4.19
Anthony D. Thomas
Commissioner Nominee
Department of Property and Procurement

_____ _____ **Date:** 3/26/19
Nelson M. Petty, Jr., P.E.
Commissioner Nominee
Department of Public Works

CONTRACTOR

_____ _____ **Date:** 3/22/19
Elroy Swanston, President
Heights Construction and Supply, LLC

(Corporate seal, if Contractor is a corporation)

APPROVED:

_____ Date: 4/25/19
Albert Bryan, Jr.
GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY
AT THE DEPARTMENT OF JUSTICE BY: Carol E. McDonald, Esq. AAG
Date 4/17/19

_____ LORG: _____ ACCT: _____ CC:
Purchase Order No.

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract No. **C009DPWC18** entered into between the Department of Property and Procurement, on behalf of the **Department of Public Works** and **Heights Construction and Supply, LLC**.

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Anthony D. Thomas, Commissioner Nominee
Department of Property and Procurement

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