

**AGREEMENT FOR ARCHITECTURAL & ENGINEERING SERVICES
BETWEEN THE VIRGIN ISLANDS HOUSING FINANCE AUTHORITY AND
BOSCHULTE ARCHITECTURE, LLC.**

This Agreement is made this November 13, 2024, by and between the **Virgin Islands Housing Finance Authority** (“VIHFA” or “Authority”), an autonomous instrumentality of the Government of the United States Virgin Islands (“VI”), whose address is 3202 Demarara Plaza, Suite 200, Charlotte Amalie, St. Thomas, VI 00802 (hereinafter “Owner” or “VIHFA”) and **Boschulte Architecture, LLC.** (hereinafter “Architect”) whose principal place of business is located at 19-2 Solberg, St. Thomas, VI 00802 and whose mailing address is P.O. Box 303190, St. Thomas, VI 00803. The VIHFA or the Architect may be referred to in the singular as the “Party” and collectively as the “Parties” for the following Project: Savan Playground and Park Improvements, located at Plot Nos. 29, 30, 31, 32, 33 and 55 Vester Gade, Queens Quarter, St. Thomas, VI 00802 (**hereinafter “the Project”**).

WITNESSETH

WHEREAS, the VIHFA is the owner of the property known as Savan Playground and Park which is located at Plot Nos. 29, 30, 31, 32, 33 and 55 Vester Gade, Queens Quarter, St. Thomas, VI (hereinafter the “Property” or “Project”); and

WHEREAS, the property has fallen into disrepair, which has severely impacted the use of the playground for the residents of Savan and the students at the Jane E. Tuitt Elementary School; and

WHEREAS, the VIHFA desires to undertake the measures required to improve conditions that have severely impacted the use of the playground for the residents of Savan and the students at the Jane E. Tuitt Elementary School; and

WHEREAS, the VIHFA applied for CDBG funds to undertake those measures required to improve the Property; and

WHEREAS, CDBG funds have been awarded for the Project; and the VIHFA executed Sub-recipient Agreement No. 895-2016 & 897-2016 with CDBG on December 23, 2016, hereinafter the “Agreement”, relative to the VIHFA’s improvements to Savan Playground and Park – *a copy of the Agreement is incorporated herein by reference*; and

WHEREAS, the VIHFA solicited bids from qualified architects to design the improvements of the Property; and

WHEREAS, the Architect was declared the winning bidder of the e-solicitation; and

WHEREAS, the Parties executed the *Agreement for Architectural Services Between Owner and Architect for Small Projects* dated June 26, 2017 (hereinafter “Agreement dated June 26, 2017”), wherein, the VIHFA agreed to compensate the Architect in the amount of \$12,000.00 to perform the tasks described therein and subject to the terms and conditions of the aforementioned e-solicitation; and

WHEREAS, the VIHFA entered into a Construction Contract with L.E.B.G., LLC to complete Phase II of the project and subsequently extended the Contract completion time to January 5, 2024; and

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WHEREAS, L.E.B.G., LLC. (the “Contractor”) submitted a change order request for time extension to the Contract on January 4, 2024. The request was not granted on a timely manner by VIHFA, and the Contract term expired.

WHEREAS, on August 8, 2024, the VIHFA’s Executive Director approved a Justification to execute new contracts with the Contractor and Architect to complete the Project; and

WHEREAS, the Construction Contract dated September 19, 2024 between VIHFA and L.E.G.B., LLC requires L.E.G.B., LLC to complete the Project within One Hundred Twenty (120) calendar days from the Notice to Proceed; 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:

Article I
Architect’s Responsibilities

1. Under the Agreement dated June 26, 2017, the Architect provided architectural design services comprising the development of drawings and specifications for the Project. Under this Agreement, the Architect shall provide architectural services in conjunction with construction administration. Services shall be performed in a manner consistent with professional skill and care.

1.1 During the construction of Phase II, the Architect shall perform the following tasks based on the signed contract between the Owner and the General Contractor:

1. The Architect shall attend up to sixteen (16) Project progress and scheduling meetings including project coordination meetings with the Owner and General Contractor as reasonably required to assist in expediting the Project and to provide clarification of construction documents. Additional project coordination meetings beyond this shall be billed as an Additional Service.
2. The Architect shall visit the project site at regular intervals as appropriate to observe the progress of the work and determine whether the work is in accordance with the construction documents. The Architect shall recommend the rejection of any work that is not in accordance with the construction documents. The Architect shall provide up to twelve (16) project site visits. Additional site visits beyond this shall be billed an Additional Service.
3. The Architect shall review and certify up to eight (8) requests for payment by the General Contractor. Additional pay application reviews shall be billed as an Additional Service.
4. The Architect shall review and take appropriate action in a timely manner on all subcontractor’s submittals such as shop drawings, product data and/or samples. The Architect shall prepare supplemental and clarification drawings, as required.



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5. At substantial completion, the Architect shall prepare two (2) "punch lists" of work to be corrected and review the corrective work to completion. Additional punch list preparation, if required for the project, shall be billed as an Additional Service."
6. The Architect shall review the status of construction to determine the dates of Substantial Completion and Final Completion. The general contractor shall be responsible for forwarding to the Owner written warranties and related documents assembled by the general contractor and subcontractors. If the Architect is required to collect written warranties and related documents, this can be performed as an Additional Service.

1.4 Exclusions

1. Architectural Services under this Contract do not include mechanical, electrical, plumbing, fire suppression, structural, or civil engineering. If these disciplines are required for the project this can be performed as an Additional Service.
2. The Owner shall be responsible for assembling, distributing, and evaluating the bid packages for construction of the project.
3. The Owner and/or General Contractor shall be responsible for securing any required permits for the construction of the project, including permit application preparation, submission to authorities having jurisdiction, production and compilation of required sets of construction documents, and any required fees.
4. Construction Management Services.
5. Redesign to meet change in project scope/project budget.
6. Appearance at Public Hearings.
7. Creation of 3D modeling.
8. Licensed engineering consultant services, including HVAC, electrical, plumbing, structural engineering.
9. Coordination of the work of Owner or Owner's consultant(s).
10. Preparation of detailed cost estimate services.
11. Services to secure project approval from the Historic Preservation Commission.

The items listed under exclusions shall be performed as Additional Service if required for the project.

Article II Owner's Responsibilities

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the project, and shall establish a budget with reasonable contingencies that meets the project requirements. The Owner shall furnish surveying, geotechnical engineering and environmental testing services upon request by the Architect. The Owner shall employ a V.I. licensed general contractor to perform the



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construction work. The Owner shall furnish for the benefit of the project all legal, accounting and insurance services.

Article III Use and Ownership of Architect's Documents

Documents prepared by the Architect are instruments of service for use solely with respect to this project. The Architect shall retain all common law statutory and other reserved rights, including copyright. The Owner shall not reuse, or permit the reuse of, the architect's documents except by mutual agreement in writing.

Article IV Miscellaneous Provisions

4.1 This Agreement shall be governed by the laws of the United States Virgin Islands.

4.2 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

4.3 The Architect and its consultant shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of or exposure of persons to, hazardous materials or historical/archaeological items in any form at the Project site.

4.4 This Agreement assumes the project is properly zoned for the planned use. Rezoning services are not included in this Agreement.

4.5 The construction budget prepared by the Architect shall be an approximation of the Construction Cost. The Architect and its consultants do not warranty, guarantee or certify that the Construction Cost for the Project or any part of the Project will not vary from bids received for actual construction of the Project.

4.6 The Architect and its consultants shall not be responsible for the method, means, or sequencing of construction.

4.7 The Architect and its consultants shall have the right to photograph the Project and to use the photographs in the promotion of its professional service through publication, advertising, public relations, brochures, websites, or other marketing media.

4.8 Unforeseen, latent or hidden conditions may not be readily ascertainable regardless of the extent of the investigation. Such conditions may impact the design and necessitate extensive revisions to the design. When architectural services are required to address these conditions, those services shall be deemed additional services.

4.9 For any damage on account of error, omission or other professional negligence, the Architect's liability shall be limited to the Architect's fee received under this Agreement.



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Article V
Payments and Compensation to the Architect

The Owner shall compensate the Architect as follows:

5.1 In consideration for the amount not to exceed Eleven Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$11,250.00), the Architect will perform the following services as described in the attached fee and project proposal dated July 16, 2024 based on a rate of \$225.00 per hour. The Architect shall invoice the Owner Monthly based on the services provided per the established hourly rate:

5.2 The Architect shall be reimbursed for expenses incurred in the interest of the Project.

A. Reimbursable expenses including, but not limited to, postage and printing cost, map fees, requisite permit application and permit fees.

B. Architect shall be paid at the hourly rate of \$225.00/hr. for additional services as defined in Section 1.5 above after approval and acceptance by VIHFA.

5.3 **TERM:** VIHFA will contract for a period of **One Hundred and Twenty (120) calendar days** from the Notice to Proceed. The VIHFA reserves the right to modify and/or terminate the contract if the Architect fails to perform in a manner consistent with the terms of the contract. In addition, the VIHFA reserves the right to modify and/or terminate the contract if funding becomes unavailable.

5.4 Payments are due payable upon receipt of the Architect's invoice.

5.5 Architectural services not covered by this Agreement include but are not limited to, revisions due to changes in the scope, quality and grade of materials specified or budget. The Architect shall be paid additional fees for these services based on the Architect's hourly rates when the services are performed.

Article VI
Liability of Others

Nothing in the Agreement shall be construed to impose any liability upon the Authority to persons, firms, associations, or corporations engaged by Architect as servants, agents, or independent Architects, 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 Architect of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Architect, its servants, agents, or independent Architects.

Article VII
Licensure



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The Architect covenants that:

- (a) It is duly organized and existing and authorized, qualified and licensed to do business in the VI.
- (b) It will, during the term of this Agreement, remain in good standing and qualified to do business under the laws of the Territory, including maintenance at all times of 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 it without the prior written consent of the Authority.
- (c) It has the power to execute, deliver and perform, and to 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 Architect is now a party or by which it is bound or constitute a default under any of the foregoing.

Article VIII Assignment

The Architect shall not subcontract or assign any part of the services under this Agreement without the prior written consent of the Authority.

Article IX Waivers and Amendments

No waivers, modification or amendment of any term, condition or provision of this Agreement 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 such 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 Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

Article X Right to Withhold

If work under this Agreement is not performed in accordance with the terms hereof, the Authority will have the right to withhold, out of any payment due to Architect, 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



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may deem proper to secure itself or to satisfy such claims. The Authority will immediately notify the Architect in writing in the event that it elects to exercise its rights to withhold.

**Article XI
Conflict Resolution**

If a dispute arises out of, or relates to, this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation pursuant to Rule 40 of the Rules of the Superior Court. The location of the mediation shall be the location of the project. The parties agree to conclude such mediation within sixty (60) days of filing the request.

Any controversy or claim arising out of or relating to this Agreement, or its breach not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided by an action in the Superior Court of the Virgin Islands.

Unless otherwise agreed in writing, the Architect shall continue the Work and maintain the approved schedules during any mediation proceedings, to the extent that it is possible to do so.

If the Architect continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

**Article XII
Termination**

Either party will have the right to terminate this Agreement with or without cause on Ten (10) days written notice to the other parties specifying the date of termination.

**Article XIII
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 Agreement on account of race, ethnicity, color, religion, sexual orientation, national origin, gender, or disability.

**Article XIV
Notice**

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



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Authority: Virgin Islands Housing Finance Authority
3202 Demarara Plaza, Suite 200
St. Thomas, U.S. Virgin Islands 00802
Attention: Eugene Jones, Jr., Executive Director

With copy to: Rupert Pelle, Director of Planning & Construction

Architect: Boschulte Architecture, LLC
P.O. Box 303190
St. Thomas, VI 00803
Attention: Jeffrey Boschulte, Managing Member

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

Article XV Governing Law

This Agreement shall be governed by the laws of the Territory of the United States Virgin Islands.

Article XVI Entirety of Agreement

This Agreement constitutes the entire agreement between the parties hereto and all prior understandings or communications, written or oral, with respect to the project that is the subject of this Contract are merged herein.

[SIGNATURE BLOCK TO FOLLOW]



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IN WITNESS WHEREOF, the parties hereto sign this Contract on the date first written above.

WITNESSES:

Brenda C. Boschulte
James Z. Boschulte

Boschulte Architecture, LLC.

Jeffrey Boschulte
Jeffrey Boschulte, Managing Member

WITNESSES:

Andra P. Valdez
Valdez Shefford

Virgin Islands Housing Finance Authority

Eugene Jones, Jr.
Eugene Jones, Jr., Executive Director

Reviewed for Legal sufficiency:

Nycole Thompson
Nycole Thompson, Esq.
Legal Counsel

Dated: October 29, 2024

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