

## **PROFESSIONAL SERVICES CONTRACT**

**THIS CONTRACT** is made as of the 2 day of December, 2024, in the Territory of the United States Virgin Islands, by and between the **VIRGIN ISLANDS HOUSING FINANCE AUTHORITY**, having its principal place of business at 3202 Demarara Plaza, Suite 200, St. Thomas, U. S. Virgin Islands 00802 (hereinafter “**VIHFA**” or “**Authority**”), and **ARROW LAND DEVELOPMENT, LLC**, whose address is 4-5 Dorothea, St. Thomas, U.S. Virgin Islands 00802 (hereinafter the “**Engineer**” or “**Contractor**”). Each party may be referred to in the singular as “**Party**” and collectively as the “**Parties**”.

### **WITNESSETH**

**WHEREAS**, the VIHFA is in need of the services of a qualified and licensed United States Virgin Islands (“USVI”) engineer to provide a metes & boundary survey of plots 6, 7, 7a, 7b, 8, 15b, & 16 Estate Taarneberg, Kings Quarter, St. Thomas, U.S. Virgin Islands; and

**WHEREAS** the VIHFA received from multiple vendors to provide the services; and

**WHEREAS**, the Engineer presented the sole bid in the amount of Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00); and

**WHEREAS**, VIHFA desires to engage the services of the Engineer to perform the services; and

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

**WHEREAS**, on October 5, 2024, the Authority’s Chief Operating Officer/Chief Disaster Recovery Office approved the decision to select the Engineer to perform the Project; and

**WHEREAS**, the Chief Operating Officer/Chief Disaster Recovery Officer submitted a Justification Memo dated October 25, 2024 to the Executive Director recommending that the Engineer to provide the necessary services and the Executive Director approved it; and

**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 to abide by the following terms:

**1. WORK TO BE PERFORMED/SCOPE OF WORK:** The Engineer agrees to furnish all labor, equipment, materials and services necessary to perform and complete the following work:

- (a) Complete a .metes & boundary survey of plots 6, 7, 7a, 7b, 8, 15b & 16 Estate Taarneberg, Kings Quarter, St. Thomas, U.S. Virgin Islands (hereinafter “**Project Location**”), including a topographical survey of the parcels describing in detail the natural features and elevations of the Properties.

(b) Provide a registered map of the plot to show any existing structures on the plot.

(c) Stake all boundary markers securely with 8' tall 1/2" PVC pipe that has reflective paint applied 6" from the top and is tagged with a high reflective ribbon.

2. **COMMENCEMENT DATE:** The Engineer agrees that time is of the essence and will commence work no later than seven (7) calendar days after the date that the Notice to Proceed is issued.

3. **COMPLETION DATE:** The Engineer shall complete the work no later than thirty (30) calendar days. The VIHFA has an option to extend the term of the contract for similar term subject to satisfactory performance.

4. **COMPENSATION:** The VIHFA, in consideration of the satisfactory performance of the Project agrees to pay the Engineer the sum of **Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00)**, in accordance with the Engineer's bid. VIHFA shall pay Engineer after satisfactory completion of the Scope of Work. The Engineer shall allow enough time for the VIHFA to review and process the Engineer's invoice(s), which can take an average of four (4) weeks.


5. **RIGHT OF ENTRY:** The VIHFA shall furnish Engineer, its agents, employees, a right-of-entry and any other authorizations or licenses needed for the Engineer to enter the Project Location to perform the Services contemplated by this Agreement. The VIHFA agrees and acknowledges that the services provided by Engineer commonly require certain activities that may disrupt the use of the Property Location. If the Engineer's activities disturb, alter, or damage the terrain and vegetation thereabout, the Engineer shall restore the Project Location to their its original state.

**6. REPORTS AND DOCUMENTS:**

6.1. In connection with the Services provided by the Engineer, the Engineer may deliver one or more printed, non-electronic and/or electronic surveys, reports, blueprints, or other documents (collectively "Documents") reflective of the Services provided and the results thereof. Any Documents provided to VIHFA by Engineer in connection with the Project are intended for the sole and exclusive use of VIHFA and its agents and employees, for the Project at the Project Location.

6.2. The Engineer may provide draft documents to VIHFA from time to time for its information. However, VIHFA shall only rely upon Documents provided in printed, non-electronic format, which are duly marked with the original seal of the Engineer. In the event that a discrepancy exists between Documents provided in electronic format and Documents provided in printed, nonelectronic format, the latter shall govern and control. Documents provided to VIHFA in electronic format are only for the convenience of the parties hereto and any conclusion or information obtained or derived from such electronic Documents will be at VIHFA's or other user's sole risk.

  
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6.3 Subject to the authorized use of VIHFA and its agents and employees, all Documents originated by the Engineer in the course of its performance of the Services set forth in this Agreement are and shall remain the sole and exclusive property of the Engineer. Such documents are specific to VIHFA, the Project, and the Project Location.

**7. REPRESENTATIONS, WARRANTIES, AND COVENANTS BY ENGINEER:** The Engineer represents, warrants and covenants that:

(a) It is duly organized and existing and authorized, qualified, and licensed to do business in the United States Virgin Islands.

(b) It will, during the term of this Contract, 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 any other entity or permit one or more other entities to 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 Contract, and has duly authorized the execution, delivery and performance of this Contract.

(d) The execution and delivery of this Contract, the consummation of the transaction contemplated hereby and the fulfillment or compliance with the terms and conditions of this Contract 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 Contract or instrument to which Engineer 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 Engineer in connection with the negotiation of, or performance under, this Contract and the consummation of the transactions contemplated hereby, contains any material misstatement of fact or omits to state a material fact that would make the information, statement or report misleading.

(f) It has obtained all applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and has familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

(g) It is fully informed regarding all the conditions affecting the work to be performed, including labor and materials to be furnished for the completion of the Contract, and is fully equipped, competent, and capable of performing the work and is available to perform such work.

(h) The Engineer further represents that it shall provide its services and meet its obligations under this Contract in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in the United States Virgin Islands and that it will provide a standard of care equal to, or superior to,

  
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care exercised by members of its profession operating in a similar locality, at a similar time and under similar conditions and circumstances.

**8. INSURANCE:** Professional Liability Insurance (E&O) – Engineer shall obtain, maintain and provide proof that it has in place Professional Liability Insurance in an amount no less than **Five Hundred Thousand Dollars (\$500,000.00)** per claim. The insurance policy shall name the VIHFA as Certificate Holder.

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

**9. INDEMNIFICATION:** Engineer agrees to protect, defend, and indemnify the Authority from any claims for deficiencies in work to be done and provided under this Contract as well as for any expenses arising from the Engineer’s performance under this Contract.

**10. INDEPENDENT CONTRACTOR:** Engineer shall perform this Contract as an independent contractor, and nothing herein contained shall be construed to be inconsistent with this relationship or status.


**11. 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 Engineer 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 Engineer of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Engineer its servants, agents, or independent contractors.

**12. ASSIGNMENT:** Engineer shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Authority.

**13. WAIVERS AND AMENDMENTS:** No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity, the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, 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. The VIHFA reserves the right to modify the contract if the Engineer to perform in a manner consistent with the terms of the contract. In addition, the VIHFA reserves the right to modify the contract if funding becomes unavailable.

**14. 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

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Engineer, 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 Engineer in writing in the event that it elects to exercise its right to withhold.

**15. TERMINATION:** Either party will have the right to terminate this Contract with or without cause on ten (10) days written notice to the other party specifying the date of termination. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

**16. FORCE MAJEURE:** The Engineer shall not be held responsible for delay or default caused by fire, riot, acts of God, or war, if the event is beyond the Engineer's reasonable control and the Engineer gives notice to the VIHFA promptly upon Engineer being actually aware of the occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events on their respective duties under the Contract. Engineer may be entitled to an equitable adjustment in schedule(s) in the foregoing circumstances.

**17. FALSE CLAIMS:**

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

(B) The Engineer acknowledges that this Contract may be funded, in whole or in part, by federal funds. The Engineer 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 Engineer acknowledges that making such false, fictitious, or fraudulent claim is a federal offense.

**18. CONFLICT OF INTEREST:** The Engineer 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.

**19. WARRANTY OF NON-SOLICITATION:** The Engineer 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 manner, 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 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 VIHFA the right to terminate this Contract or, in its discretion, to deduct from the Contract Cost or consideration the amount of such commission, percentage, brokerage or contingent fees.

**20. NO COLLUSION:** Engineer shall not collude with other VIHFA vendors / service providers regarding VIHFA business or matters. Engineer shall not enter into any business

  
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relationships with other VIHFA service providers regarding VIHFA business or matters, without the approval of VIHFA, which approval may be withheld at VIHFA's sole discretion.

**21. COPELAND "ANTI-KICKBACK ACT:** Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Engineer shall comply with all applicable "Anti- Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**22. 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.

**23. TAXES:** Engineer 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.

**24. AUTHORIZED REPRESENTATIVE:** The person executing this Contract on behalf of Engineer affirmatively represents that he has the requisite legal authority to enter into this Contract on behalf of Engineer and to bind Engineer to the terms and conditions of this Contract. Both the person executing this Contract on behalf of Engineer understand that the Authority is relying on this representation in entering into this Contract.

**25. NOTICE:** Any notices required or permitted 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:

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

**ENGINEER:** **Arrow Land Development**  
P.O. Box 302069  
St. Thoams, U.S. Virgin Islands 00803  
**Attention: Nelson Petty, P.E., Principal Partner**

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.

  
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26. **SEVERABILITY:** In the event that one or more of the provisions of this Contract shall be found unenforceable, illegal or invalid, it shall not affect any other provisions of this Contract, and this Contract shall be construed as if the provision found to be unenforceable, illegal or invalid had never been contained in the agreement, or the unenforceable, illegal or invalid provision shall be construed, amended and/or reformed to be made enforceable, legal and valid.

27. **GOVERNING LAW AND JURISDICTION:** This agreement shall be governed by and construed pursuant to the laws of the United States Virgin Islands. The parties shall submit disputes arising out of or in connection with this agreement to the exclusive jurisdiction of the courts of the United States Virgin Islands.

28. **ENTIRE CONTRACT:** This Contract and any attachments thereto constitute 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.

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

30. **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.

**IN WITNESS WHEREOF,** both parties have caused this Contract to be executed by their duly authorized representatives on the date first above written.

WITNESSES:

Witness 1: [Signature]

Witness 2: [Signature]

WITNESSES:

Witness 1: [Signature]

Witness 2: [Signature]

**Arrow Land Development, LLC**

[Signature]

**Nelson Petty, P.E., Principal Partner**

Dated: 11 / 19 / 2024

**Virgin Islands Housing Finance Authority**

[Signature]

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

Dated: 12 / 2 / 2024

Reviewed for Legal Sufficiency:

[Signature]

Nycole A. Thompson, Esq.

Legal Counsel

Dated: 11/18/2024