



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

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DEPARTMENT OF PLANNING AND NATURAL RESOURCES

**MEMORANDUM OF AGREEMENT**

**BETWEEN THE**

**DEPARTMENT OF PLANNING AND NATURAL RESOURCES**

**AND**

**THE ST. THOMAS HISTORICAL TRUST, INC.**

This Memorandum of Agreement ("MOA") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the Government of the Virgin Islands, Department of Property and Procurement acting on behalf of the Department of Planning and Natural Resources, (hereinafter referred to as "DPNR") acting through the Commissioner, or designee, and The St. Thomas Historical Trust (hereinafter referred to as the "TRUST"), acting through the President of the Trust or designee.

This MOA is for the purpose of facilitating cooperation and assistance between these organizations in the creation, perpetuation, and operation of mutually agreed upon programs and activities.

**BACKGROUND**

On June 3<sup>rd</sup>, 1977, Isidor and Charlotte Paiewonsky sold to the Government of the Virgin Islands of the United States Parcel 6 (known as Fort Willoughby or Prince Frederik's Fort), and Parcel 7 (known as the Magazine or the Garrison House) Estate Orkanhullet, No. 9, Southside Quarter, Hassel Island. Pursuant to Acts 2375 and 2405 the Government of the Virgin Islands deeded to the Virgin Islands Port Authority Parcel No. 5, No. 9 Estate Orkanhullet, Southside Quarter (known as Cowell's Battery), Hassel Island. These parcels contain significant historical remains. The Fort Willoughby and Magazine House properties were sold to the Government under the following conditions:

1. That the old Danish buildings located on the properties be forever maintained and operated as historical monuments, and that the public always be guaranteed appropriate and reasonable access thereto;
2. That the sole and perpetual use to which the properties may be put is operation and maintenance as historic and passive recreational areas; and
3. That the properties be incorporated into and included as part of the Territorial Park

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**MEMORANDUM OF UNDERSTANDING  
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System. Fort Christian, a National Historic Landmark, underwent a Stabilization and Conservation study that identified major repairs that were needed to preserve this important National treasure. The Fort Christian Conservation and Stabilization Project was started in 2005 and, due to unforeseen difficulties with the project's contract administration, Landmark and Museum remain closed to the public. Although all of the restoration items have not been completed on the Fort, it could be safely made accessible to the Public with some minimum repairs to the Visitors' service areas. Doing so would allow Virgin Islands residents and visitors the opportunity to experience the Fort's history and observe the restoration work when it resumes.

For the purposes of this MOA, the properties are the subject of cooperation and assistance between the DPNR and the TRUST. On Hassel Island, the Fort Willoughby or Prince Frederik's Fort and the Magazine or the Garrison House properties will be known as "the sites" on Hassel Island and Fort Christian will be known as "Fort Christian." At such time as DPNR acquires title to the parcel known as Cowell's Battery and Signal Station, and it is no longer subject to any leasehold interest, it shall become subject to this MOA.

Since the acquisition of these parcels on Hassel Island, the sites have not received any meaningful investment in access, maintenance, interpretation or facilities available to the public. There is an increasing need and demand for such investment, especially in view of the effective lack of access and rapid and continuing deterioration of the resources. In recognition of the DPNR's need for assistance in funding for such investments, as well as providing volunteer support, the TRUST agrees to undertake to seek such funding and support. This objective of this effort is to increase funding as well as public awareness and involvement, thereby enhancing the DPNR's ability to develop access, interpretive exhibits and other facilities for these sites on Hassel Island and Fort Christian.

## **ARTICLE I**

### **Objectives and Authority**

**WHEREAS**, the DPNR and the TRUST recognize that it is mutually advantageous to enter into this agreement to assure the preservation, protection and enjoyment of these sites on Hassel Island and Fort Christian, and

**WHEREAS**, it is the purpose of the DPNR to preserve, protect and manage its sites on Hassel Island and Fort Christian for the benefit and enjoyment of the people of the Virgin Islands and our visitors alike; and

**WHEREAS**, the TRUST is a non-profit, tax-exempt, fund-raising and volunteer organization dedicated to the protection and preservation of the natural and cultural resources of St. Thomas, and wishes to promote the responsible enjoyment and distinct historic significance of Hassel Island and Fort Christian, unique national treasures; and

**WHEREAS**, the TRUST seeks to accomplish its mission by funding, supporting and/or implementing projects and activities that result in the protection of natural resources; creating awareness for the preservation of the cultural resources and enhancement of environmental awareness; promoting volunteer and community involvement on Hassel Island; advocating for the potential users of Hassel Island; and, advocating on behalf of Hassel Island to advance Hassel Island interests before the Territorial Government, and among the general public.

**WHEREAS**, the TRUST seeks to accomplish its mission by funding, supporting and/or implementing the projects and activities that offer protection of Fort Christian's natural resources, while speaking specifically to the proper interpretation of the past uses of the Fort; creating awareness for the preservation of the cultural resources; promoting volunteer and community involvement at Fort Christian; advocating for the relevant potential use of Fort Christian; and advocating on behalf of Fort Christian to advance the interests of Fort Christian before the Territorial Government, and among the general public.

**WHEREAS**, the TRUST is committed to promoting better community involvement and understanding;

**WHEREAS**, the TRUST is an independent organization; and, although supportive of the DPNR, reserves the right to differ respectfully;

**NOW THEREFORE**, pursuant to the authority described above and other laws supplemental thereto, and in consideration of the mutual benefits, which will accrue to the DPNR and the TRUST, the parties agree as follows:

## **ARTICLE II**

### **Statement of Work**

#### **A. RESPONSIBILITIES OF THE TRUST**

##### **1. Activities and Obligations**

(a) The TRUST shall provide the herein described services and aid to the DPNR for a period of five years commencing on the day following the ratification of this MOA.

(b) The TRUST may display signs, exhibits and/or membership and promotional materials within the site and right of way boundaries provided they are approved by the Department of Public Works, and are in good taste and in keeping with the general design, interpretation and decor of Hassel Island and only upon written approval of the Commissioner of DPNR or designee(s), the Directors of the Virgin Islands State Historic Preservation Office (VISHPO) or the Department of Libraries, Archives and Museums (DLAM) as appropriate.

(c) In all cases where rights or privileges are granted herein in general or for indefinite terms, the extent of such rights or privileges to be exercised by the TRUST shall be determined by further written agreement with DPNR.

(d) No transfer or assignment of this MOA or any part thereof or interest therein, shall be made unless such transfer or assignment is first approved in writing by the Commissioner and the President of the Trust.

(e) An evident and distinct separation shall be maintained between the activities of the TRUST and those of the DPNR.

(f) The Trust solicits funds for numerous projects. Donations may be solicited and accepted by the TRUST and specified by a donor for a particular activity or project on the sites on Hassel Island or at Fort Christian. If not specified, but intended for the sites

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or Fort Christian, they will be placed in the general operating fund of the TRUST for use in connection with the sites and/or Fort Christian and to provide funding for the DPNR Annual Support Request. The Trust shall no later than October 1<sup>st</sup> of each year report to DPNR the item(s) that will be funded in their Annual Support Request.

(g) The DPNR grants to the TRUST the right to conduct tours of the sites, with the understanding that all net revenues of such tours will be utilized to further the maintenance, preservation and interpretation of the sites, the access dock and the trails connecting the sites. Plans for all such efforts shall be submitted to the DPNR's Office of the Commissioner for approval prior to being undertaken by the TRUST. The Trust's right to conduct tours of the Hassel Island DPNR historic sites is not an exclusive right and the DPNR shall have the right to conduct mutually coordinated tours in partnership with other tours groups/nonprofits, etc. Such tours shall be coordinated with the Trust.

(h) The Trust shall be authorized to conduct historical tours of Fort Christian Museum. Such tours will include a mutually agreed upon entry fee for entrance to the Fort Christian Museum. The Trust's right to conduct tours of the Fort Christian Museum is not an exclusive right and the DPNR shall have the right to conduct mutually coordinated tours in partnership with other tours groups/nonprofits, etc.. No more than thirty (30) days after each tour conducted to the Museum, the Trust shall pay an amount equivalent to such fees collected to the Fort Christian Museum Curator's Office.

(i) The TRUST will coordinate with the Department of Tourism for tours between October 1<sup>st</sup> and April 30<sup>th</sup> and with the Department of Education for tours during the school calendar year.

## **2. Facilities**

(a) The TRUST shall establish necessary administrative space at the sites on Hassel Island as is necessary and shall at all times keep such space and facilities in a clean and presentable condition. No structural modifications shall be made without the written approval of the Commissioner or designee.

(b) The TRUST shall not establish or maintain administrative space within Fort Christian. No structural modifications shall be made without the written approval of the Museum's Director.

(c) Should the DPNR loan any property to the Trust, the TRUST shall exercise reasonable care to prevent damage to such property and shall, protect and maintain all such loaned property and return it to the DPNR in good condition, reasonable wear and tear excepted.

## **3. Records and Accounting**

(a) The TRUST shall annually submit to the Commissioner a complete financial report accompanied by a written summary of activities for the previous fiscal year related to the sites on Hassel Island and Fort Christian. This report shall be submitted within 90 days of the end of the fiscal year.

(b) The Commissioner or designee, may request, and the TRUST shall, upon reasonable notice provide access to its records related to the sites on Hassel Island and Fort Christian during the term of this MOA.

#### **4. Personnel**

(a) TRUST employees or volunteers are not government employees and are not authorized to undertake any government function or activity on behalf of the DPNR.

They shall not interfere with government employees in the performance of their duties. The TRUST or its employees are not authorized to set the work hours of the Government's employees or schedule or confirm any activity without the written consent of the Commissioner and the appropriate Director. The TRUST's employees or volunteers shall not engage in any activities that might lead the public to conclude that they are government employees. DPNR employees, in a private capacity unrelated to their jobs, may be active volunteer members of the TRUST.

(b) Hours of business operation at Fort Christian shall be Monday through Friday, 9:00 a.m. – 4:00 p.m. Any and all other activity outside of these hours must be approved by the Commissioner or designee at least three (3) weeks prior to the activity. Sufficient personnel must be identified and be available for the entire duration of all activities scheduled outside the regular working hours.

### **B. RESPONSIBILITIES OF DPNR**

#### **1. Activities and Obligations**

(a) No later than August 1<sup>st</sup> of each year, the DPNR shall provide the Trust with a list of critical needs for the sites on Hassel Island and Fort Christian, for review, discussion, and consideration by the Trusts' Board of Directors. The DPNR will work collaboratively in developing this list. This list shall be known as the "Annual Support Request." This support request, prepared in a manner agreed upon by the parties, is intended to facilitate clear communication of the DPNR's needs to the TRUST and will provide guidance as the TRUST establishes support priorities. Following the Annual Support Request, additional requests may be made to allow flexibility in addressing the sites on Hassel Island and Fort Christian.

(b) In the event that funds are advanced by the DPNR to the Trust for a project or activity, the Trust will provide the DPNR with reasonable reporting to account for the expenditure of these funds in a manner specified by the DPNR consistent with generally accepted accounting principles.

(c) The DPNR, to the extent allowable by law and consistent with DPNR policy and management objectives, shall cooperate with the TRUST in assuring the success of mutually agreed upon activities.

#### **2. Facilities**

The DPNR may permit the TRUST to use office space and/or other facilities on a "space available" basis to perform activities for the benefit of the sites on Hassel Island Any other significant use of facilities would be the subject of a separate agreement.

### **3. Personnel**

The Commissioner or designee(s), and the VISHPO/DLAM Directors, will cooperate, to the extent possible, in assuring the success of mutually agreed upon projects or activities. The Commissioner or designee and the VISHPO/DLAM shall be ex-officio (non-voting) members of the TRUST, and shall be active in supporting the TRUST and in attending Trust meetings addressing the sites on Hassel Island and Fort Christian.

## **ARTICLE III**

### **Terms of Agreement**

#### **Professional Standards**

The DPNR and the TRUST agree to maintain professional standards applicable to the operations and functions of the sites on Hassel Island and Fort Christian on St. Thomas.

#### **Documents, Printouts, Etc.**

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived there from and pertaining to this MOA shall become public records and shall be turned over to it at the termination of this MOA.

#### **Liability of Others**

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

#### **Assignment**

The TRUST shall not subcontract or assign any part of the services under this MOA without the prior written consent of the DPNR.

#### **Indemnification**

The TRUST agrees to investigate, defend, and hold harmless the DPNR from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges, and expense (including attorney's fees) and causes of action of whatsoever character which the DPNR may incur, sustain, or be subjected to, arising out of or in any way connected to the services to be performed by the TRUST under this MOA and arising from any cause, except the sole negligence of the DPNR.

#### **Compensation**

The DPNR and the TRUST, in consideration of the services provided by the TRUST, agree that the TRUST receives no pay for its services, in accordance with the provisions set forth in ARTICLE I, the fifth paragraph, attached hereto and incorporated herein by reference.

### **Condition Precedent**

This agreement shall be subject to the mutual cooperation and participation as stated in this document and to the approval of the Governor of the United States Virgin Islands.

### **Conflict of Interest**

- (a) The TRUST covenants that they have no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this MOA.
- (b) The TRUST further covenants that it has:
  - (1) No territorial officer or employee (i.e., The Governor, Lieutenant Governor, member of the Legislature or any other elected official; or an officer or employee of the Legislative, Executive, or Judicial branches of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated or a salary, fee or contractual basis), or
  - (2) A territorial officer or employee and, as such has:
    - (i) Familiarized himself with the provisions of Title 3, Chapter 37, Virgin Islands code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof:
    - (ii) Not made, negotiated or influenced this MOA, in their official capacity;

No financial interest in the MOA as that term is defined in Section 1101 of said Code chapter.

### **Effective Date**

This MOA shall be in effect from the day of execution by the Governor signed below until December 31, 2017. This agreement may be extended for another five year period by executing an Exercise of Option to Renew unless a written notice of cancellation is provided giving 90 days notice to the other party.

### **Notice**

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

Lynn A. Millin Maduro, Esq.  
Commissioner  
Department of Procurement and Procurement

Sub Base, Building No. 1  
St. Thomas, Virgin Islands 00802

Alicia V. Barnes  
Commissioner  
Department of Planning and Natural Resources  
8100 Lindberg Bay, Suite #61  
Cyril E. King Airport Terminal Building, 2nd Floor  
St. Thomas, V.I. 00802

Ronald S. Lockhart  
President  
St. Thomas Historical Trust, Inc.  
P.O. Box 6707  
St. Thomas, V.I. 00804

Charles Consolvo  
Chairman  
Hassel Island Task Force  
P.O. Box 6707  
St. Thomas, V.I. 00804

### **Licensure**

The TRUST 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 pertaining to professions and occupations.

### **False Claims**

The TRUST warrants that it shall not, with respect to this Agreement, make or present any claim upon or against the Government of the Virgin Islands, or DPNR, knowing such claim to be false, fictitious, or fraudulent. The TRUST acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

### **Notice of Federal Funding**

The TRUST acknowledges that this Agreement may be funded, in whole or in part, by federal funds. The TRUST warrants that it shall not, with respect to this Agreement, make or present any claim knowing such claim to be false, fictitious or fraudulent. The TRUST acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

### **Debarment Certification**

By execution of this Memorandum of Agreement, the TRUST certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or



debarred from entering into contracts with any federal agency. In the event the TRUST misrepresents its eligibility to receive contract awards using federal funds, the TRUST shall not be entitled to payment for any work performed under this agreement or shall promptly reimburse the DPNR for any progress payments heretofore made.

## **ARTICLE IV**

### **Property Management and Disposition**

#### **A. Legal Requirements**

The rights and benefits conferred by this MOA shall be subject to the laws and regulations of the United States Virgin Islands, whether now in force or hereafter enacted or provided; and the mention of specific restrictions, conditions and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation and control by the DPNR.

#### **B. Dissolution**

Upon the dissolution of the TRUST, the Board will dispose of all the TRUST's assets in a way the Board deems most faithful to its mission and consistent with the law.

## **ARTICLE V**

### **Termination**

Each party reserves the right to terminate this MOA, or any part thereof, at any time with ninety (90) days written notice. However, the party seeking to terminate the agreement shall notify the other party prior to the termination setting forth the reasons for termination.

## **ARTICLE VI**

### **NON-DISCRIMINATION**

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

### **COUNTERPARTS**

This MOA may be executed in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

### **COOPERATION**

The parties agree to: 1) cooperate with each other in the performance of this MOA and negotiation of any modifications hereto in order to achieve and maintain timely compliance of the goals and objectives of the MOA 2) to add additional sites to be managed as historic museums that both parties deem to be appropriate in accordance with their missions and 3) cooperate with each other in the performance of this MOA as it relates to any grants or funding that may be obtained or provided for meeting the general goals and objectives of this

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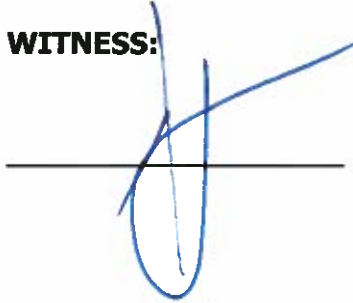
agreement. Any issues, which the parties are unable to resolve, shall be submitted promptly to the Governor for a final determination, which shall be binding.

**Signatures**

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the date first written above.

**WITNESS:**

**St. Thomas Historical Trust, Inc.**



By: 

Ronald S. Lockhart,  
President

Date

8/21/13

Attest:



By: 

Charles Consolvo  
Chairman, Hassel Island Task Force

Date

8/21/13

**WITNESS:**

**DEPARTMENT OF PLANNING & NATURAL RESOURCES**



By: 

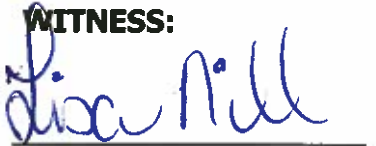
Alicia V. Barnes  
Commissioner

Date

8/22/13

**WITNESS:**

**DEPARTMENT OF PROPERTY & PROCUREMENT**



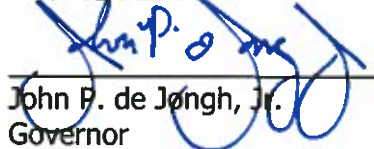
By: 

Lynn A. Millin Maduro  
Commissioner

Date

8/23/13

**APPROVED:**

  
John P. de Jongh, Jr.  
Governor

Date

September 10, 2013

**APPROVED:**

**DEPARTMENT OF JUSTICE**



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Date

8-23-13