VIRGIN ISLANDS WATER AND POWER AUTHORITY
PROFESSIONAL GENERAL CONTRACT TERMS/FEDERAL REQUIREMENTS

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VIRGIN ISLANDS WATER AND POWER AUTHORITY
PROFESSIONAL GENERAL CONTRACT TERMS

1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

a. The term **"Work"** or **"Scope of Work"** shall mean all work described in the Specifications, Request for Proposals, Invitation or Bid or Contract and all requirements of these Professional General Contract Terms (including alterations made before the Contract was signed and changes provided for by Clause 10 hereof).

b. The term **"Specifications"** shall mean the detailed description of, and requirements for, work to be performed, including all plans and drawings, which are a part of the Specifications.

c. The term **"Authority"** shall mean the purchaser and owner of the Work, the Virgin Islands Water and Power Authority, or an authorized agent thereof.

d. The term **"Contractor"** shall mean the successful bidder who had been awarded the Contract for the performance of the Work, and shall include his/her legal personal representatives, successors, and assigns.

e. The term **"Contract"** shall mean the written agreement between the Authority and the Contractor.

f. The term **"Site"** shall mean anywhere the work is required to be performed.

g. The term **"Contracting Officer"** shall mean the Executive Director of the Authority and any other officer or employee who is properly designated and shall include, except as otherwise provided, the authorized representative of the Contracting Officer acting within the limits of his authority. The Contracting Officer shall not mean the Project Coordinator.

2. GENERAL STATEMENT OF RESPONSIBILITY OF THE CONTRACTOR

a. The Contractor shall perform the work in accordance with the terms of the Contract. This work includes all necessary services, the furnishing of all labor, materials, equipment, tools, supervision, transportation and insurance, except as otherwise provided. The obligation of the Contractor shall be deemed to carry with it the obligation to incur all items of necessary expense to perform the Work.

b. The Contractor shall be an independent contractor and shall have complete and undivided responsibility for complying with the Contract, including sole discretion for the means by which the Work is to be performed. Without any qualification of such undivided responsibility, the Contractor shall have the right to enter into such subcontracts, purchase orders, and other

commitments with third parties for the performance of any part of the Work, as may in his opinion be advantageous or necessary for the expeditious or economical prosecution of the Work. The Contractor shall not assign the Contract or any of his/her duties or responsibilities thereunder.

c. Any provisions of the Contract which appear to give the Authority the right to direct the Contractor as to the means by which the Work is to be performed, or to exercise any control over the Work shall mean that the Contractor shall be obliged to follow the desires of the Authority only as to the end results and shall not in any way modify or relieve the Contractor of his/her complete and undivided responsibility for the means by which the Work is to be performed.

d. All services performed or materials provided by Contractor under the Contract shall strictly comply with the terms, conditions, and requirements, and shall be done in a professional and workmanlike manner in accordance with the Contract.

e. Contractor shall be responsible for the professional quality, technical accuracy and timely completion of its services furnished under the Contract. Contractor shall, without additional compensation, and at its own cost and expense, correct or revise any errors, omissions or other deficiencies in the services.

3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

a. The Contractor agrees to commence the Work promptly after receipt of a written Notice to Proceed from the Authority and to complete it no later than the Contract completion date.

b. The Contractor shall furnish and maintain during the performance of the Work, 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 Contract completion date shall be the date specified in the Contract, unless the parties have agreed to an acceptable later date, except that the completion date may be extended under Clauses 10 or 13 hereof. The Work shall be deemed to be completed upon acceptance by the Contracting Officer following written notification from the Contractor that the Work has been performed in accordance with the Contract scope.

4. LICENSES AND RESPONSIBILITY FOR WORK, ETC.

Contractor shall comply with all federal and local laws, codes or regulations, which apply to performance of the Work. Contractor shall secure at its own expense, all necessary license and certificates necessary to perform the Scope of Work.

5. ACCESS TO WORK IN PROGRESS

The work shall be performed at the Site or in the Contractor's office or at a location mutually satisfactory to both parties and such location shall not be changed without approval of the Project Coordinator. The Project Coordinator shall have access during the normal working hours where the Work is performed and to all of the data, calculations, models, test results, specimens and documents and any other matter related to the performance of the work scope of the contacts.

6. PROGRESS REPORTS AND WORKING SCHEDULES

The Contractor shall prepare monthly progress reports of the Work or such reports as required by the Project Coordinator. When requested by the Authority, the Contractor shall furnish the underlying documents used in the preparation of any progress report including, if applicable, estimated material and equipment, procurement, manufacturing, shipping, installation and construction schedules: Provided that if, in the judgment or the Contractor, furnishing copies would involve inordinate expense the Authority may be provided access to such document instead.

7. CHANGES

The Contracting Officer may at any time and without notice to the sureties issue a written request for changes in the Work if within its general scope. Within the time specified in the request but not later than thirty (30) days after its receipt, the Contractor shall submit an estimate of the effect of the changes, if any, upon the Contract price, the completion date, or other terms or conditions of the Contract. The changes shall not be put into effect, nor shall any work proceed, until ordered in writing by the Contracting Officer. Contractor's actions in proceeding with the changes to the scope of work without first securing written authorization from the Contracting Officer shall result in the legal presumption that shall be prima facie that the Contractor is not entitled to additional compensation. Compensation for changes to the scope of work, 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. Provided however, that disagreement between the parties on adjustments for changes shall not excuse the Contractor from proceeding with the prosecution of the Work as changed.

8. SUSPENSION OR INTERRUPTION OF WORK

a. The Contracting Officer may in writing, order the Contractor to suspend all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Authority.

b. If without the fault or negligence of the Contractor the performance of all or any part of the Work is suspended or interrupted hereunder for any unreasonable period of time, the Contract price shall be adjusted for any increase in the cost of performing the Work excluding profit necessarily caused by such unreasonable period of suspension or interruption, and the Contract shall be modified in writing accordingly. Provided that a claim therefor shall be asserted in writing as soon as practicable after the termination of such adjustment or interruption; and

provided further that no adjustment shall be made to the extent that performance by the Contractor would have been prevented by other causes, even if the Work had not been so suspended or interrupted.

c. Paragraph b, above shall not be construed to apply to specific periods of delay or suspension for which advance provision has been made such as anticipated weather conditions.

9. A. TERMINATION FOR DEFAULT

(i) If the Contractor shall commit a material breach or default of any of its covenants or obligations under the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Authority, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Authority may terminate by fifteen (15) days written notice the Contractor's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may take over the Work and prosecute same to completion by contract or otherwise and the Contractor and his sureties may be liable to the Authority for any excess cost occasioned the Authority thereby, and for damages inclusive of any excess cost occasioned by the Authority until such reasonable time as may be required for final completion of the Work. If the Contractor's right to proceed is so terminated, the Contractor shall provide so that the Authority can utilize in the completion of the Work such materials, data, reports, calculations, and information as has been compiled by Contractor in the performance of the Work which the Authority has previously paid for.

(ii) If the Authority shall commit a material breach or default of any of its covenants or obligations under the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Contractor, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Contractor may, by fifteen (15) days written notice to the Authority, terminate the Authority's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may be liable for damages.

(iii) Upon receipt of a termination notice, Contractor shall (a) promptly discontinue all Work to the extent directed; and (b) secure the Work site to avoid damage or injury to persons or property.

B. TERMINATION FOR CONVENIENCE

(a) The Authority may, at any time, terminate the Contract for its convenience and without cause.

(b) Upon receipt of written notice from the Authority of such termination for the Authority's convenience, the Contractor shall:

i. cease operations as directed by the Authority in the notice;
ii. take actions necessary, or that the Authority may direct for the protection and preservation of the Work;
iii. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.

(c) In the case of such termination for Authority's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred (as outlined in b (iii)) by reason of such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Authority, becomes the property of the Authority.

10. DELAYS AND DAMAGES

The Contractor shall not be liable for any failure or delay in the completion of the Work resulting from any cause beyond his control and without his fault or negligence, including but not restricted to, compliance with any instructions or priority requests of the Federal Government or any agency thereof, or the Government of the Virgin Islands, acts of God, acts of the public enemy, acts or omissions of the Authority or its agents, acts of another contractor in the performance of a contract with the Authority, fires, floods, epidemics, unusually severe weather, strikes, lockouts, embargoes, wars, riots, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault of or negligence of both the Contractor and such subcontractors and suppliers: Provided, that the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the Contract, notify the Contracting Officer in writing of the delay and causes of delay: and provided, further, that the Contractor shall be excused for delays of suppliers only if the Contracting Officer shall determine that the materials or supplies to be furnished are not procurable in the open market. Any excusable failure or delay hereunder shall extend the Contract completion date accordingly, upon agreement by the Authority, but shall not affect any of the other terms or conditions of the Contact.

11. CONTRACT PRICE

The Work shall be performed for the Contract price. This Contract price shall be subject to change only in accordance with Clauses 12 hereof and shall be inclusive of all duties, fees, and levies, and all taxes imposed with respect to the performance of the Work.

12. TERMS OF PAYMENT

(1) Payments will be in accordance with the following:

a. The total number of increments of progress payments Work shall not exceed 6. Each increments of Work shall equal the Contract price.

b. Progress payments will be made within thirty (30) days after the issuance of a Certificate of Acceptance by the Project Coordinator of an itemized and duly certified invoice issued by the Contractor based upon completion of each increment of Work as listed under paragraphs 2 herein.

c. In making such partial payments there shall be retained ten percent (10%) on the invoiced amount until final completion and acceptance of the Work: Provided, however, that the Contracting Officer at any time after fifty percent (50%) of the Work has been completed, may approve the payment of any of the remaining partial payments in full.

d. All material and work covered by partial payments made shall thereupon become the sole property of the Authority, but the provisions shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Authority to require the fulfillment of all the terms of the Contract.

(2) Upon completion and acceptance of the Work, the amount due the Contractor under this Contract will be paid upon the presentation of a properly executed and duly certified invoice thereof. The Contractor shall furnish the Authority with a release, if required, of all claims against the Authority arising under and by virtue of the Contract, other than such claims, if any, as may be specifically accepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

The obligation of the Authority to make any of the payments required under the Contract shall, in the discretion of the Contracting Officer, be subject to (i) workmanship, (ii) any claims, which the Authority may have against the Contractor and (iii) satisfaction of payment obligations to subcontractors or third party's making claims against Contractor with regard to the performance of the Scope of Work. Any overpayment to the Contractor shall, unless otherwise adjusted, be repaid to the Authority upon demand.

(3) Upon presentation of a request for payment, Contractor shall provide a statement of payments made or owed to all subcontractor(s), which statement shall be independently verified by the subcontractor(s). The Authority reserves the right to withhold payments to Contractors that fail to satisfy subcontractor claims(s).

13. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES

a. The Contractor shall comply strictly with all federal and local laws, codes, and regulations.

b. Should any amendments or additions to territorial laws, codes, or regulations subsequent to the date of advertisement for bids affect any designs or requirements set forth in the Work so as to increase the Contract price or extend the Contract completion date, such amendments or additions shall be deemed to be changes within the meaning of Clause 7 hereof.

14. INSURANCE

The Insurance requirements are as set forth in the attached Exhibit I

15. INDEMNIFICATION FOR INJURY AND DAMAGE CLAIMS

(a) Contractor shall indemnify, defend, and hold the Authority and its servants, employees and agents harmless against any and all claims, damages, injuries, suits, actions, causes of action for damages or alleged damages, orders, judgments, expenses, costs, and attorney's fees, arising after the commencement of the contract, brought for damages or alleged damages arising out of any injury or loss of life, claim or demand of any person or property in any way connected with or arising out of the performance of the work. It is the intention and express agreement of the parties that the Authority shall not be liable for any bodily or personal injuries, loss of life or damage, to Contractor, its servants, employees, agents, invitees, or to Contractor's subcontractors, subcontractor employees, agents, or invitees, or to any other person, or property of Contactor, irrespective of how the same may be caused, whether from action of the elements, or acts of negligence of the Authority, its employees or agents, the Contractor, its servants, employees, agents, or invitees, or the Contractor's subcontractors, subcontractor employee, agents and invitees. It is the intention of the parties that this paragraph shifts the cost of all insurance, whether benefitting Contractor or the Authority, or both, to the Contractor.

(b) If the Authority is sued for acts arising out of those set out in (a) above, the Contractor shall promptly accept the tender of defense made by the Authority, as a condition of this contract.

(c) It is further the intention of the parties, that Contractor, its servants, employees, agents, and its carrier will not look to or require the Authority to contribute to any settlement.

(d) Notwithstanding any other provisions of this Agreement to the contrary, neither the Authority or Contractor shall be liable whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for punitive, special, indirect, incidental or consequential losses or damages, including loss of profits, use, opportunity, revenues, financing, bonding capacity, or business interruptions; provided that the limitation of liability set forth in this Section shall not apply to Contractor's: (i) indemnity obligations with respect to Third-Party Claims, (ii) willful misconduct, and/or (iii) gross negligence. "Third-Party Claim" means a claim by any person other than (i) a Party or (ii) person providing or receiving indemnity under this Contract.

16. RIGHT TO AUDIT

Contractor shall establish and maintain a reasonable accounting system that enables the Authority to readily identify Contractor's assets, expenses, costs of goods, and use of funds. The Authority shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Contractor, including, but not limited to those kept by the (Contractor), its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this Agreement and for a period of five years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the Authority, whether during or after completion of this Agreement, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the Authority along with an adequate workspace and access to photocopying machines. Such records shall be made available to the Authority during normal business hours at the Contractor's office or place of business and subject to a three-day written notice/without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Authority.

Contractor shall ensure the Authority has these rights with Contractor's employees, agents, assigns, successors, and subcontractor, and the obligation of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to Authority.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Authority unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the Authority in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the Authority for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Authority may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Authority's findings to Contractor.

17. CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract nor is there any agreement or understanding for a commission, percentage, brokerage, or contingent fees, in connection with obtaining this contract. For breach or violation of this provision the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

18. GRATUITIES

The Authority may, by written notice to the Contractor, terminate this Contract if it is found by the Authority, after notice and hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative thereof, to any officer or employee of the Authority with a view towards securing the Contract or securing favorable treatment with respect to the performance of such Contract. The Authority's findings hereunder shall be conclusive.

In the event this Contract is terminated pursuant to this paragraph, the Authority shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (ii) as a penalty, in addition to any other damages to which the Authority is entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall not be less than three nor more than ten times the costs incurred or paid by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the Authority under this provision shall not be exclusive and are in addition to any other remedies provided by law or under this Contract.

19. NOTICE

Any notice which shall be required to be given under the Contract shall be in writing in duplicate, mailed in a postage prepaid wrapper, registered and addressed, in the case of the Contractor to his home office, and in the case of the Authority to the Contracting Officer.

20. ENFORCEMENT

The failure of either party to enforce at any time any of the provisions of the Contract or any rights in respect thereto, or to exercise any option herein provided, shall not be construed to constitute a waiver of such provision, right or option or in any way effect the validity of the contract or the obligation and responsibilities of the parties thereto. The exercise by either party of any of its right or options herein shall not preclude or prejudice either party from exercising any other right it may have.

21. GOVERNING LAW

The laws of the Virgin Islands shall govern the interpretation and construction of the Contract to the extent applicable, otherwise the laws of the State of New York shall be the governing. The

Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

22. EFFECTIVE DATE

The Contract shall become effective retroactive to the date of signature by the authorized representative of the Contractor or the Authority, whichever is later, which later date shall be the effective date of the Contract.

23. ENTIRE AGREEMENT: MODIFICATION

The Contract constitutes the entire agreement between the parties. The Contract may not be amended or modified except by an instrument in writing signed by duly authorized representatives of the parties.

24. OTHER REQUIREMENTS

All of the reports, information, data, studies, reports, memoranda documents, etc., prepared or assembled by Contractor pursuant to the Work are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the Authority.

All documents and data, written or otherwise generated by Contractor under the Contract including original drawings, estimates, reports, specifications, calculations, field notes, data, etc., and work product are to become the property of and shall be delivered to the Authority. Contractor to retain once reproducible copy of these documents generated by the Contractor.

Contractor shall remove from the Work any person assigned thereto who is deemed by the Authority to be objectionable and shall indemnify and hold harmless the Authority regarding any claim arising out of such action. Contractor shall not remove or reassign its Project Manager in charge of the Work or its other key personnel designated in the Contract without the prior approval of the Authority unless such person is no longer employed by the Contractor.

25. STANDARD OF CARE

The standard of care applicable to Consultant's services will be the degree of skill and diligence normally practiced by professionals or consultants performing same or similar services.

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, the Virgin Islands Water and Power Authority, 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 Island law.

27. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that if this Contract is funded, in whole or in part, by federal funds, 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. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

28. EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; laying off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared

ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter onto such litigation to protect the interests of the United States."

29. COMPLIANCE WITH THE COPELAND "ANTI- KICKBACK" ACT

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145. and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

30. COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for

all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with request to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. FEMA or such other authorized Federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same the prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

31. CLEAN AIR ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.S. 7401 et. seq.

2. The contractor agrees to report each violation to the local Department of Planning & Natural Resources ("DPNR") and the Authority and understands and agrees that DPNR and the Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150, 000 financed in whole or in part with Federal assistance provided by FEMA.

32. FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Department of Planning and Natural Resources ("DPNR") and the Authority and understands and agrees that DPNR and the Authority will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency regional office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

33. SUSPENSION AND DEBARTMENT

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by Contractor. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Government of the Virgin Islands, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions."

34. BYRD ANTI-LOBBYING AMNEDMENT, 31 U.S.C. § 1352

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress or an employee or a member of congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

35. ACCESS TO RECORDS

1. The contractor agrees to provide the Government of the Virgin Islands, the Authority, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. The contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completer under the contract.

36. DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the Authority, or DHS seals(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA or Authority preapproval.

37. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, Executive Orders, FEMA policies, procedures, and directives.

38. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

39. PROGRAM FRAUD AND FALSE OR FRAUDLENT STATEMENT OR RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False

Claims and Statements) applies to the contractor's action pertaining to this contract.

40. PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the Contractor shall make the maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guidlines-cpg-program.″

E X H I B I T I
WAPA INSURANCE REQUIREMENTS

A.	**Liability and Workers Compensation Insurance Requirements**				
During construction, Contractor and/or its general contractor are to carry the liability and workers' compensation insurances set out below. Subcontractors are to carry the same coverages but required limits may be amended at the discretion of the Contractor for subcontractors to reflect the size of their contracts, subject to a minimum limit of $1,000,000 each for Commercial General Liability, Automobile Liability and Employers Liability. After receipt of evidence of insurance for any subcontractor, WAPA reserves the right to require limits up to those required for the Contractor. Once operations have begun, Contractor and/or its general contractor shall have in place and at all times maintain the below liability and workers' compensation insurances.					
	Coverage Type	**Minimum Limit**		**Maximum Deductible or Retentions**	
1.	Commercial General Liability	$2,000,000*	Combined single limit per occurrence and i n the aggregate where applicable	$100,000	Per occurrence
2.	Automobile Liability	$2,000,000*	Combined single limit per accident	$100,000	Per accident
3.	Employers Liability	$2,000,000*	Each accident for bodily injury by accident Each employee and policy limit for bodily injury by disease	$100,000	Each accident or employee (for disease)
4.	Workers Compensation	Statutory requirements	Per occurrence	N.A.	N.A.
5.	Professional Liability	$2,000,000*	Per occurrence and i n the aggregate	$25,000	Per occurrence
* Combination of primary and excess or umbrella liability policies. Any combination of primary and excess limits is acceptable if the total equals or exceeds the specified amount.					
	Liability Insurance Terms and Conditions				
	a.	Occurrence Basis	The primary General Liability policy and any Excess or Umbrella Liability policy that provides additional limits over the primary General Liability policy shall be "occurrence-based" policies. Claims-made policies will not be accepted.		
	b.	Additional Insured	The General Liability policy and any Excess or Umbrella Liability policy shall be endorsed to name WAPA as an additional insured. Any such policy shall contain language that: "Such insurance as afforded by this policy for the benefit of WA PA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WA PA shall be excess of and noncontributing with insurance afforded by this policy."		
	c.	Completed Operations	The Contractor and any subcontractors' General Liability coverage in place during construction shall include Completed Operations coverage,		

			which coverage is to continue for a minimum of two years following completion of construction.
	d.	Defense Costs	Defense costs in all primary liability policies shall be “outside the limit”, i .e., the full policy limits are for the payment of damages.

B.	**Environmental Impairment Liability Insurance Requirements**

Contractors are to carry Environmental Impairment Liability (“EIL”) insurance with a minimum limit of $2,000,000 annual aggregate. EI L coverage is to be maintained during the full term of the contract and for five years following completion of construction. The EIL policy (or policies if the limit is met with a combination of primary and excess policies) are subject to the following terms and conditions:

1. There shall be no exclusion for prior acts or conditions of which the insured is unaware.
2. The EIL policy shall be endorsed to name WAPA as an additional insured. Any such policy shall contain language that "Such insurance as afforded by this policy for the benefit of WAPA shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by WAPA shall be excess of and noncontributing with insurance afforded by this policy."
3. The EIL policy will cover liability for property damage or bodily injury to third parties, including clean-up or remediation of any damaged property.
4. The insurer may but is not required to participate i n the defense of any claim.
5. Defense costs are to be covered as part of the annual aggregate limit.

C.	**Property Insurance Requirements**

Property policy(ies) shall cover all risks of direct physical loss to the property, including coverage for collapse and transit (with respect to property i n transit that will become a part of buildings or structures under construction).

Boiler and machinery coverage on a breakdown basis are to be included in the All Risk policy or provided i n a separate policy. Testing of any equipment is to be included.

There shall be no exclusion for the perils of explosion, collapse or underground damage.

1.	Builder’s Risk Property Insurance (to be in place from inception of construction through final testing and acceptance at which time property insurance converts to the permanent property insurance program (see C.2.),		
	Coverage Type	**Minimum Limit**	**Maximum Deductible or Retentions**

	Earth Movement including Earthquake, Volcanic Activity, and Subsidence.	Replacement Value of Insurable Real and Personal Property	Annual Aggregate	5% of Replacement Value	Per Occurrence
	Hurricane/ Windstorm		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Debris Removal	20% of Replacement Value	Per occurrence	Included	
	Ordinance or Law	10% of Replacement Value	Per occurrence	Included	
	Expediting Expense	20% of Replacement Value	Per occurrence	Included	
	All Other Perils (including boiler and machinery perils where applicable)	Replacement Value of Insurable Real and Personal Property	Per occurrence	$100,000	Per Occurrence
	Soft Costs	100% of costs which would be incurred again following a total loss at the end of construction.		45 Days	Per Occurrence
2.	Property Insurance (Permanent program to be in place simultaneously with the expiration or cancellation of the Builders' Risk coverage (see C. 1.) and shall remain in place continuously through the term of the Agreement)				
	Coverage Type	**Minimum Limit**		**Maximum Deductible or Retentions**	
	Earth Movement including Earthquake, Volcanic Activity, and Subsidence.	Replacement Value of Insurable Real and Personal Property.	Annual Aggregate	5% of Replacement Value	Per Occurrence
	Hurricane/ Windstorm		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Flood including Tsunamis		Annual Aggregate	5% of Replacement Value	Per Occurrence
	Debris Removal	20% of Replacement Value	Per occurrence	Included	

	Ordinance or Law		10% of Replacement Value	Per Occurrence	Included	
	A l l Other Perils (including boiler and machinery perils where applicable)		Replacement Value of Insurable Real and Personal Property	Per Occurrence	$500,000	Per Occurrence
	Extra Expense/ Expediting Expense Combined		20% of Replacement Values	Per Occurrence	Included	
	Replacement Power Extra Expense		To the extent coverage is reasonably available, 100% of incremental expense that WA PA incurs to replace the annual output of the Facility for one year following a covered occurrence, such amount to be determined with WA PA each year.		45 Days	Per Occurrence
	Property Insurance Terms and Conditions					
	a.	Coinsurance	No property policy may contain a coinsurance clause.			
	b.	Ordinance or Law	Each property policy is to cover the costs incurred i n repairing or replacing the damaged property to meet current building codes. Coverage is to be provided for: Loss to the Undamaged Portion of the Building Demolition Cost Increased Cost of Construction			
	c.	Terrorism	Terrorism coverage is not required.			
D.	**Requirements Applicable to All Insurance Policies**					
	1.	Insurance Company Rating	All insurance companies shall be rated A- or better by A.M . Best's. Should an insurance company's rating fall below A-, Seller (or its general contractor) shall replace that insurance company with a qualifying insurance company within 60 Days.			
	2.	Notice of Cancellation	Each insurance company shall provide written notification to WA PA 60 Days prior to the effective date of any cancellation or non-renewal.			
	3.	Evidence of Compliance with Insurance Requirements at Insurance Date	Evidence is to consist of an original certificate of insurance signed by an approved officer of the insurance company or its authorized representative. The certificate shall show: ▫ The name of the insurance company ▫ The policy period ▫ The policy number ▫ The description of the property ▫ The name of the Seller/Policyholder ▫ WA PA as an additional insured (General Liability and Excess or Umbrella Liability only)			

			W A PA as loss payee (Builders Risk Property Insurance and Property Insurance including Replacement Power Extra Expense) The 60 Days cancellation notice Liability insurance certificates are to be on ACORD form 28 or its equivalent for property insurance and ACORD form 25 or its equivalent for liability insurance. Evidence of workers' compensation insurance shall be issued by the appropriate Workers' Compensation Administration bureau of the Government of the Virgin Islands.
	4.	Evidence of Renewal or Replacement Policies	Contractor shall advise WA PA of any renewals or replacements of the required insurances by providing the same documentation required i n C.3 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.