



VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
ST. THOMAS, U.S. VIRGIN ISLANDS 00804-1450

**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND POWER AUTHORITY
AND HAUGLAND VIRGIN ISLANDS, INC.**

SC-16-20

The following Contract is a properly negotiated agreement between all parties involved. Any marks, changes, white out, or deletions, without the expressed written permission from all parties involved, shall make this contract null and void.

This Contract is entered into this 3rd day of April, 2020 by and between the Virgin Islands Water and Power Authority (hereinafter called the "Authority" or "WAPA") at mailing address Post Office Box 1450, St. Thomas, U.S. Virgin Islands 00804 and HAUGLAND VIRGIN ISLANDS, INC. (hereinafter called the "Contractor") at 18A Estate Havensight, St. Thomas, U.S. Virgin Islands 00803 to furnish 3-way, 4-way, 5-way, and 6-way 15 kV pad mounted switchgears along with the 15 kV automatic source transfer pad mounted switchgear. The Authority and the Contractor shall jointly be referred to as the "Parties".

WITNESSETH

In consideration of the mutual promises, covenants, and conditions contained herein the Parties hereto, intending to be legally bound, hereby agree as follows:

1. **SCOPE OF WORK:** The Contractor shall furnish 3-way, 4-way, 5-

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way, and 6-way 15 kV pad mounted switchgears and a 15-kV automatic source transfer pad mounted switchgear in accordance with drawings and specifications. The scope of work also requires Contractor to :

- Provide factory acceptance testing for source transfer switch and each type of pad mounted switchgear. Owner will arrange for their own travel expenses for the factory acceptance test. Training will also be provided to the Authority's Project Person(s) during the factory acceptance test for the source transfer switchgear and each type of switchgear.
- Ship equipment to Crown Bay, St. Thomas, U.S.V.I. The equipment shall be separated by feeder for shipment and all equipment and packaging shall be clearly labeled to match the equipment and packaging shall be clearly labeled to match the equipment approved nameplate.
- Perform on site programming, startup, and commissioning services on the source transfer switch, and on a total of six (6) pad mounted switchgears. The on-site services shall occur during one trip to St. John, U.S.V.I.

The Scope of Work (hereinafter the "Work") shall be performed in accordance with the drawings, specifications, and requirements contained in the following documents:

1. The Authority's General Contract Terms with Federal Requirements dated April 7, 2019. This document is incorporated by reference herein as Appendix "A"; and,
2. The Authority's Request for Proposal (PR-01-20) and cover letter, dated September 18, 2019, collectively incorporated by reference herein and identified as Appendix "B", and,

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3. The Authority's Request for Proposal (PR-01-20), Addendum I and cover letter, dated September 27, 2019, collectively incorporated by reference herein and identified as Appendix "C"; and,
4. The Authority's Request for Proposal (PR-01-20), Addendum II and cover letter, dated October 4, 2019, collectively incorporated by referenced herein and identified as Appendix "D"; and,
5. The Authority's Request for Proposal (PR-01-20, Clarification I, dated November 8, 2019, collectively incorporated by reference herein and identified as Appendix "E"; and,
6. The Contractor's response to the Authority's Request for Proposal, (PR-01-20), dated October 11, 2019, collectively incorporated by reference herein and identified as Exhibit "A";
7. The Contractor's response to the Authority's Request for Proposal, (PR-01-20), dated November 8, 2019. This document is incorporated by reference herein as Exhibit "B".

2. **TERM:** This Contract shall take effect upon its full and final execution by the Parties and issuance of a Notice to Proceed (hereinafter "Effective Date"). The Contract shall terminate two hundred and ten (210) days from the effective date.

3. **CONSIDERATION:** In consideration of the performance of the Work, the Authority shall pay Contractor the sum of Three Million Eighty-Nine Thousand Five Hundred Dollars and 00/100 (\$3,089,500.00). Payments shall be made upon on a progress billing and payment method as outlined in section 3 below, after review and approval by the Authority's Project Coordinator.

Payment of any taxes, duties, customs, excise or other fees shall be the sole responsibility of the Contractor. The Authority shall not be responsible in any way for any taxes, customs, duties, excise or other fees. The Authority shall NOT have any obligation to directly pay or see to the payment of Subcontractors, except as may otherwise be required by law.

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4. TERMS OF PAYMENT: Payments to the Contractor for completion of Work that is satisfactory to the Authority under the terms of this contract. The Contractor shall invoice the Authority after successfully completing each milestone consistent with the terms of this Contract. The Authority will make payment within thirty (30) days after invoicing is approved for successfully completed milestones. Payments shall be made on a progress billing and payment method, after review and approval by the Authority's Project Coordinator, in accordance with the below payment schedule:

a. 5% Commence of Contract / Notice to Proceed:	\$	154,475.00
b. 15% Shop Drawings Approval :	\$	463,425.00
c. 20% Successful Factory Acceptance Test:	\$	617,900.00
d. 50% Shipment received by VIWAPA	\$	1,544,750.00
e. 10% Final/Completion of onsite programming-		
Start-Up Services:	\$	<u>308,950.00</u>
TOTAL	\$	<u>3,089,500.00</u>

6. CONSIGNMENT OF EQUIPMENT: The Contractor shall consign the Equipment to the Authority. The Authority will accept any consignment of the Equipment delivered CIP (Carriage and Insurance Paid, according with INCOTERMS 2018), at a port in the Virgin Islands. The Contractor's consignment request must clearly state the terms of each consignment, , and Title Transfer (herein known as "Title").

Title to Equipment shipped from the U.S. shall pass to the Authority upon payment in full; however, Contractor shall maintain in favor of the Authority, transport insurance covering All Risks in an amount equal to one hundred percent (100%) of the value of shipped consignment.

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7. **GROSS RECEIPT TAXES:** Title 33, Section 44 of the Virgin Islands Code, as amended, requires the Authority when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33 VIC Section 43(a) for each Work performed in the Virgin Islands. Notwithstanding any other provisions of this contract to the contrary, it is agreed between the Parties that for the purposes of complying with Title 33, Section 44 of the Virgin Islands Code, the Authority shall withhold and forward to the Bureau of Internal Revenue the sum of or such amount as required by law at 33 VIC Section 43(a). Despite the requirements under Title 33, Section 44, the Contractor agrees that calculation of gross receipts taxes shall be the sole responsibility of the Contractor. Per the Contractor's calculation, the total value of on-island work is \$62,500.00, and the amount of Gross Receipts withheld shall be \$3,125.00. The Authority shall not be responsible in any manner for miscalculation of the gross receipts due under this contract or for any additional assessments by the Bureau of Internal Revenue resulting from work performed under this contract.

In the event the contract is amended and the consideration for on-island work increases, the appropriate amount of Gross Receipt Taxes to reflect the increase in consideration will be deducted.

8. **BUSINESS LICENSE:** The Contractor and, if applicable, any of its sub-contractors must comply with all U.S. Virgin Islands licensing laws in connection with its business operations. The Contractor shall obtain all necessary and applicable business licenses for itself and its subcontractors and present copies of them to the Authority at

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contract execution. Failure of the Contractor to present copies of its licenses shall be grounds to consider the Contract as void.

9. BOND REQUIREMENTS: Contractor shall obtain a performance bond and payment bond in the amount of 100% of the Contract Price. A copy of said bonds must be presented to the Contracting Officer of the Authority upon Contract execution. Further, failure by Contractor to present its performance bond and payment bond upon contract execution may, at the sole option of the Authority, be grounds to rescind the contract award. If scope of work under this Contract is changed to require additional work which results in an increase in the Contract's consideration, the performance and payment bond, may, at the Authority's option, be increased to adequately cover the additional work in which cost Contractor shall be entitled to a cost adjustment for the cost of increasing the bond.

10. LATENT SITE CONDITIONS: Respective Responsibilities of the Parties at the Site – Latent Site Conditions: Anything to the contrary notwithstanding, should concealed or unknown physical conditions be encountered in the performance of the Work, below the surface of the ground or in an existing structure, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, the Contract sum and Contract time for performance shall be equitably adjusted by Change Order.

Hazardous Materials: Anything to the contrary notwithstanding, Contractor shall have no liability for any hazardous material as described above not introduced to the Work location by it, and the Authority shall indemnify, defend and hold harmless Contractor for any claims or liabilities arising from preexisting or latent hazardous

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materials, except to the extent Contractor negligently or willfully exacerbates same and fails to take action to mitigate any resultant damage.

11. INDEMNIFICATION: If the Authority is entitled to indemnification under this Agreement and the Contractor fails, after notice and reasonable opportunity, to assume the defense of such claim, the Authority may at the expense of the Contractor contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim and Contractor shall upon demand promptly reimburse the Authority for all defense and settlement costs.

12. ENVIRONMENTAL RESPONSIBILITY: The Contractor shall, in the performance of the Scope of Work referenced herein, comply with all applicable rules, regulations, and guidelines issued by the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the V.I. Department of Planning and Natural Resources (DPNR), and all other federal and territorial regulatory agencies.

The Contractor shall indemnify the Authority for any and all fines that may be assessed against it as a result of the Contractor's failure to adhere to the laws, regulations and directives of the federal and territorial regulatory agencies; and it shall furthermore pay all costs, expenses, and attorney's fees in connection therewith. Additionally, the Contractor shall pay all costs of the Authority for any abatement activities it may be required to undertake should contractor fail to comply with the requirements of this section.

13. SAFETY PRECAUTIONS: The Contractor shall be responsible for initiating and maintaining safety precautions and programs and supervising its

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personnel to ensure the safe performance of the Work. The Contractor shall, furthermore, provide all its personnel with sufficient and appropriate safety devices.

The Contractor shall ensure that the services provided, and the products, equipment, and materials furnished and/or utilized are in strict compliance with any and/or all applicable codes and standards regulating its activities, including, but not limited to the following:

1. EPA- Environmental Protection Agency
2. OSHA - Occupational Safety and Health Administration
3. NEC- National Electric Code
4. NEMA-National Electric Manufacturer's Association
5. RCRA- Resource Conservation and Recovery Act
6. TSCA- Toxic Substance and Control Act
7. DOT- Department of Transportation
8. ASTM- American Society of Testing Materials
9. AGMA- American Generator Manufacturer's Association
10. NESC -National Electric Safety Code
11. AWWA- American Water Works Association
12. NSF- National Sanitation Foundation
13. NACE- National Association of Corrosion Engineers
14. SSPC - Steel Structure Painting Council

The Contractor shall also comply with all applicable U.S. Virgin Islands' building, plumbing, mechanical, electrical, fire, health and public safety codes.

14. DESIGNATED PERSONNEL: The Parties reserve the right to designate personnel to provide information and to coordinate the Work between the Parties.

The Authority designates the following:

Elton Leitch
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804-1450
(340) 774-3552 extension 2251
elton.leitch@viwapa.vi

The Contractor designates the following individual in the following capacity:

John Reynolds
Haugland Energy, LLC
336 South Service Road
Melville, NY 11747
(516) 336-6720
jreynolds@hauglandllc.com

15. PROFESSIONAL STANDARDS: The Contractor shall observe and maintain the professional standards and good practices applicable to its profession and to Contractors doing business in the U.S. Virgin Islands.

16. LIABILITY OF OTHERS: Nothing in this Contract shall be construed to impose any liability against the Authority to persons, firms, associations, or corporations engaged by the Contractor 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 Contractor of whatsoever nature, including but not limited to employment insurance and social security taxes for Contractor, its servants, agents, employees, or independent Contractors.

17. INSURANCE: The Contractor shall, at its expense, before any Work is

commenced, cause to be issued and maintained until sixty (60) days after acceptance of the Work, insurance as described in the Authority's General Contract Terms revised April 7, 2019. A copy of the insurance certificate must be presented to the Authority's Contracting officer at contract execution.

18. CONTRACT DOCUMENTS: The Contractor shall perform and complete the Work in accordance with the Contract and the Contract Documents. The "Contract Documents" include:

1. The Authority's General Contract Terms with Federal Requirements dated April 7, 2019. This document is incorporated by reference herein as Appendix "A"; and,
2. The Authority's Request for Proposal (PR-01-20) and cover letter, dated September 18, 2019, collectively incorporated by reference herein and identified as Appendix "B", and,
3. The Authority's Request for Proposal (PR-01-20), Addendum I and cover letter, dated September 27, 2019, collectively incorporated by reference herein and identified as Appendix "C"; and,
4. The Authority's Request for Proposal (PR-01-20), Addendum II and cover letter, dated October 4, 2019, collectively incorporated by referenced herein and identified as Appendix "D"; and,
5. The Authority's Request for Proposal (PR-01-20), Clarification I, dated November 8, 2019, collectively incorporated by reference herein and identified as Appendix "E"; and,
6. The Contractor's response to the Authority's Request for Proposal, (PR-01-20), dated October 11, 2019, collectively incorporated by reference herein and identified as Exhibit "A";
7. The Contractor's response to the Authority's Request for Proposal, (PR-01-20), dated November 8, 2019. This document is incorporated by reference herein as Exhibit "B".

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In the event of any conflict, the terms of this Contract and the Authority's RFP and its Addendums shall govern over the provisions of any other document.

18. GENERAL CONTRACT TERMS: This Contract is subject to the Authority's General Contract Terms attached hereto and made a part hereof as Appendix "A".

19. CHANGE ORDERS/ADDITIONAL SERVICES: The Contracting Officer must approve in writing all change orders or requests for additional services. In the absence of such written approval, the Authority shall not be liable for the payment of any services performed outside the scope of the Contract.

20. GOVERNING LAW: The laws of the U.S. Virgin Islands shall govern the interpretation and construction of this Agreement to the extent applicable. The Parties agree that all causes of action against either Party shall be brought in the court of competent jurisdiction in the Virgin Islands. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

21. 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 or by 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, conditions, or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

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

The Authority: Lawrence J. Kupfer
Executive Director (CEO)
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804

The Contractor: William Haugland
Haugland Energy Group, LLC
336 South Service Road
Melville, NY 11747
(516) 336-6720
bill@hauglandllc.com

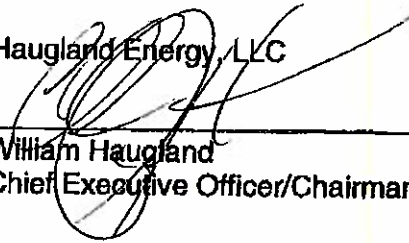
24. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original and the same instrument, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

23. ENTIRE AGREEMENT: This Contract and the Contract Documents constitute the entire agreement of the Parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.


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IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the day, month and year first above-written.

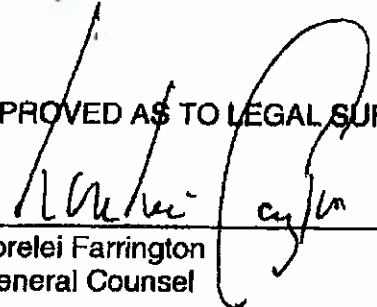

WITNESS

Haugland Energy, LLC
By: 
William Haugland
Chief Executive Officer/Chairman


WITNESS

V.I. WATER & POWER AUTHORITY
By: 
Lawrence J. Kupfer
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:


Lorelei Farrington
General Counsel

Attachments