



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 BBC ELECTRIC SERVICES, INC.**

SC-04-20

The proceeding 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 29th day of August, 2019, by and between the Virgin Islands Water and Power Authority (hereinafter called the "Authority") at mailing address Post Office Box 1450, St. Thomas, U.S. Virgin Islands 00804 and BBC Electric Services, Inc. (hereinafter called the "Contractor") at mailing address 5467 Hwy. 43 South, Joplin, MO 64804, to provide emergency line crew and equipment for the restoration of the Authority's electrical transmission and distribution systems after a hurricane or other natural disaster on the islands of St. Thomas, Water and Hassel Islands, St. Croix, and St. John, US Virgin Islands. 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:

A handwritten signature in black ink, appearing to be a stylized 'C' or similar mark.

1. SCOPE OF WORK: The Contractor shall provide emergency manpower and necessary equipment to rebuild the Authority's electrical distribution systems on the islands of St. Thomas, Water and Hassel Islands, St. John and St. Croix, US Virgin Islands after a hurricane or other natural disasters as assigned. Specifically, Contractor shall be capable of providing up to ten crews consisting of seven (7) persons per crew. Contractor shall also be capable of providing up to two digger crews, comprised of a driver and an operator and two grounds men. Each crew will be supervised by a field supervisor. The work includes but is not limited to new construction and/or rebuilding of energized electrical lines with voltage of 34500/25000/13800 and 69000 voltage alternating currents. In addition to rebuilding or reconstructing the Authority's electrical power distributions systems in the event of hurricane or other natural disaster, the Contractor shall be available to assist the Line Department on the respective islands with projects as assigned by the Line Superintendent of the Authority. The Scope of Work (hereinafter the "Work") shall be performed in accordance with the 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-25-19) and cover letter, dated June 21, 2019, collectively incorporated by reference herein and identified as Appendix "B";
3. The Authority's Request for Proposal- Addendum I and cover letter dated June 24, 2019, collectively incorporated by reference herein and identified as Appendix "C";
4. The Authority's Request for Proposal- Addendum II and cover letter dated June 25, 2019, collectively incorporated by reference herein and identified as Appendix "D";

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5. The Authority's Request for Proposal- Addendum III and cover letter dated June 27, 2019, collectively incorporated by reference herein and identified as Appendix "E";
6. The Authority's Request for Proposal- Addendum IV and cover letter dated July 2, 2019, collectively incorporated by reference herein and identified as Appendix "F";
7. The Authority's Request for Proposal- Addendum V and cover letter dated July 16, 2019, collectively incorporated by reference herein and identified as Appendix "G";
8. The Authority's Evaluation Committee's- Clarification I and cover letter dated August 1, 2019, collectively incorporated by reference herein and identified as Appendix "H";
9. The Contractor's response to the Authority's Request for Proposal, PR-25-19, dated July 19, 2019 incorporated by reference herein and identified as Exhibit "A"; and
10. The Contractor's response to the Authority's Clarification I, dated August 1, 2019 incorporated by reference herein and identified as Exhibit "B".

Additional provisions to the Scope of Work of Contract are as follows:

- a. Capability to furnish up to ten (10) crews consisting of seven (7) members per crew and supporting equipment for each crew to work independently. The total number of crews needed will be determined by the Authority at time of notification for assistance. If determined necessary by the Authority, the Contractor will use reasonable effort to locate and engage the additional crews as the need arise. The Contractor shall be responsible to maintain a full crew status.
- b. Electrical line crew knowledgeable of Construction Standards, the latest edition of the National Electrical Safety Code, Occupational Health and Safety Act (OSHA) to include Section 1910.269 and are qualified to work energized lines.
- c. Qualified technical supervisory personnel, tools, safety devices, equipment, and mechanics determined necessary to provide service as requested in the scope of work. Compliance with applicable OSHA standards, to include Section 8 1910.269 and the National Electric Safety Code are mandatory.

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- d. Vehicles and equipment as indicated in Section III-B, capable of working on energized lines. Compliance with applicable National Electric Safety Code, OSHA standards, to include Section 910.269 and Department of Transportation equipment are mandatory.
- e. Qualified manpower and equipment to dig holes at required depth in accordance with Table 1, attached to this proposal. Compliance with applicable OSHA standards, to include Section 910.269 and the National Electric Safety Code are mandatory.

Note: If the Contractor is unable to dig to recommended pole setting depth for soil, the Authority is to be contacted for

- *Approval of rock setting depth; or to*
- *Provide a compressor crew for greater depth.*

- f. Qualified crew and equipment to handle and set poles on energized and de-energized electrical lines. Compliance with applicable OSHA standards to include Section 1910.269 and the National Electric Safety Code are mandatory.
- g. Qualified crew and equipment to install anchors and guy attachments. Compliance with applicable OSHA standards to include Section 19010.269 and the National Electric Safety Code are mandatory.
- h. Detail description of what constitutes a full crew and identification of what resources and or equipment are associated therewith.
- i. Qualified safety inspectors knowledgeable of the latest edition of the National Electrical Safety Code, Occupational Health and Safety Act (OSHA) to include Section 1910.269 and experienced with line work.
- j. Project management personnel experience with line work to track contractor crew work, prepare written progress reports, and attend meetings and provide updates on contractor crew progress.

Optionally, if deemed necessary by the Authority, the Contractor shall provide:

- a. Qualified crew and equipment to provide tree-trimming services. Crew must have line clearance certification. Certified arborist may also be requested to monitor tree-trimming activities. Compliance with applicable OSHA standards to include Section 1910.269 and the National Electric Safety Code are mandatory.

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- b. Qualified compressor and equipment operators to assist digging holes, operating equipment, and other tasks. Compliance with applicable OSHA standards to include Section 1910.269 and the National Electric Safety Code are mandatory.

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 twelve (12) months from the Effective Date.

3. **CONSIDERATION:** Consideration for the restoration Work performed in the aftermath of a hurricane or other natural disaster shall be based on the unit prices, without escalation as contained in the Contractor's response to the Authority's Request for Proposal, PR-25-19, dated July 19, 2019, identified as Exhibit "A". Time and material pricing may be used, with the approval of the Authority, in circumstances where a unit prices has not been established or is not feasible for the task with a ceiling price to be negotiated by the Parties. Consideration for the Work shall also be subject to Section II of the Authority's Request for Proposal, PR-25-18, dated June 2019, identified as Appendix "B".

Gross receipt taxes, corporate taxes, income taxes, and all other taxes, duties, import fees, vehicle registration fees or other taxes resulting from this project will be the responsibility of Contractor if such taxes are not waived during the emergency.

4. **TERMS OF PAYMENT:** Contractor shall submit itemized and duly certified bi-weekly invoices to the Authority. All invoices will show the following: If unit pricing applies, a description of the services performed at the unit pricing. If time and material pricing: detailed labor and equipment hours billing. Labor billing will show employee name, classification, billing code (if applicable), hourly rate, and hours



worked. Equipment billing will show equipment description, billing code (if applicable), hourly billing rate, and hours worked. The Authority will not be responsible for charges for idle equipment. All invoices will be broken down by customer work order number, where applicable.

All invoices will be submitted bi-weekly. Payment terms are Net 30 days after the invoice date and the receipt of a Certificate of Acceptance by the Authority. No retainage will be withheld, and no liquidated damages will apply during this period.

The Authority shall NOT have any obligation to pay, or see to the payment of, money to Subcontractors, except as may otherwise be required by law.

5. 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 payment for 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 any changes to the 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. 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 herein increases, the



appropriate amount of Gross Receipt Taxes to reflect the increase in the consideration will be deducted.

6. 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 and present copies of them to the Authority before starting the Work. Failure of the Contractor to present copies of its licenses shall be grounds to consider the Contract as void.

7. DAMAGES: Consequential Damages-Exclusion of Damages: Notwithstanding anything in this Contract to the contrary, neither party shall be liable to the other for any indirect, special, incidental, punitive, exemplary or consequential damages, whether based in contract, tort, warranty, strict liability or otherwise, including, but not limited to damages for lost production, lost revenue, lost product, lost profits, lost business or loss of use whether or not such damages were foreseeable or either party was advised of the possibilities of such damages; except to the extent of such party's (including parties under its control) willful misconduct, gross negligence, and/or breach of confidentiality provisions, and indemnity obligations hereunder for their party claims.

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

9. RELIANCE: The Contractor's representations of its ability to perform the Work with skilled and competent personnel are a substantial and material condition of this Contract.

10. 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.

11. 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.

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

13. 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:

Niel Vanterpool
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804-1450
(340) 690-4262
niel.vanterpool@viwapa.vi

The Contractor designates the following individual in the following capacity:

Chris Couch
Chief Financial Officer
BBC Electrical Services, Inc.
5467 Hwy 43 South
Joplin, MO 64804
(417) 206-4047
ccouch@bbcelectrical.com

14. 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.

15. 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.

16. 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.

17. 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-25-19) and cover letter, dated June 21, 2019, collectively incorporated by reference herein and identified as Appendix "B";
3. The Authority's Request for Proposal- Addendum I and cover letter dated June 24, 2019, collectively incorporated by reference herein and identified as Appendix "C";
4. The Authority's Request for Proposal- Addendum II and cover letter dated June 25, 2019, collectively incorporated by reference herein and identified as Appendix "D";
5. The Authority's Request for Proposal- Addendum III and cover letter dated June 27, 2019, collectively incorporated by reference herein and identified as Appendix "E";

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6. The Authority's Request for Proposal- Addendum IV and cover letter dated July 2, 2019, collectively incorporated by reference herein and identified as Appendix "F";
7. The Authority's Request for Proposal- Addendum V and cover letter dated July 16, 2019, collectively incorporated by reference herein and identified as Appendix "G";
8. The Authority's Evaluation Committee's- Clarification I and cover letter dated August 1, 2019, collectively incorporated by reference herein and identified as Appendix "H";
9. The Contractor's response to the Authority's Request for Proposal, PR-25-19, dated July 19, 2019 incorporated by reference herein and identified as Exhibit "A"; and
10. The Contractor's response to the Authority's Clarification I, dated August 1, 2019 incorporated by reference herein and identified as Exhibit "B".

In the event of any conflict, the terms of this Contract shall govern.

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". The General Contract Terms are modified as follows:

Clause 3 – COMMENCEMENT, PROSECUTION AND COMPLETION OF PROJECT

Delete paragraphs a and c in their entirety.

Clause 5 – SITE

Delete section in its entirety.

Clause 6 – RESPECTIVE RESPONSIBILITIES OF THE PARTIES AT THE SITE

Delete paragraphs a, b, d, and f.

Clause 7- ACCESS TO WORK IN PROGRESS

Delete in its entirety.



Clause 8 – PROGRESS REPORTS AND WORKING SCHEDULES

Delete first sentence and replace as follows:

Contract agrees to furnish the Authority with written progress reports through Contractor's project manager and to make available to the Authority such documentation of progress as the Authority may reasonably require, including, but not limited to, daily crew work reports.

Clause 14 – TERMS OF PAYMENT

Delete the first sentence. Also delete paragraphs a(ii) and paragraph b- second sentence

Clause 15 – EQUIPMENT AND CONSTRUCTION WARRANTIES

Delete in its entirety.

Clause 19 – PATENT INFRINGEMENT

Delete section in its entirety

Clause 22 – PERFORMANCE BOND

Delete section in its entirety

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.

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: Chris Couch
Chief Financial Officer
BBC Electrical Services, Inc.
5467 Hwy 43 South
Joplin, MO 64804
(417) 206-4047
ccouch@bbcelectrical.com

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.

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.

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

Bryan Sipes
WITNESS

BBC Electrical Services, Inc.

By: [Signature]
Chris Couch
Chief Financial Officer

[Signature]
WITNESS

V.I. WATER & POWER AUTHORITY

By: [Signature]
Lawrence J. Kupfer
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

[Signature] 8/21/19
Lorelei Farrington
General Counsel

Attachments