

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 BIRD ELECTRIC, INC.**

**SC-11-21**

**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 24th day of September, 2020, by and between the Virgin Islands Water and Power Authority hereinafter (the "Authority") located at 9720 Estate Thomas, P.O. Box 1450, St. Thomas, USVI 00804 and Bird Electric, Inc. hereinafter (the "Contractor") located at address 8787 Interstate 20, Eastland, Texas 76448 to provide emergency manpower, equipment, and other resources to rebuild the Electrical Distribution System in the United States Virgin Islands (St. Thomas, Water and Hassel Islands, St. John and St. Croix) after the occurrence of an emergency, hurricane or other disaster. 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/WORK:** The Contractor shall provide emergency manpower and the necessary resources and equipment to rebuild the Authority's Electrical Distribution Systems as outlined in the Authority's Request for Proposal PR-26-20 and cover letter dated May 5, 2020, attached herein as Appendix "B". Contractor's services include but are not limited to:

- Constructing and/or rebuilding of energized electrical lines with voltage of 34500/25000/13800 and 6900 Voltage Alternating Currents in accordance

with the Authority's' T&D Construction Standards, 2018 Edition; attached hereto as Appendix "C" and Composite Pole Framing guidelines attached hereto as Appendix "D";

- Transporting any pole and related hardware removed resulting from the scope of work assigned to a designated area established by the Authority;
- Providing technical supervisory personnel, tools, safety devices, equipment and mechanics necessary to provide service as requested in the scope of work;
- Providing electrical line crews; knowledgeable in the most current power line construction standards, which crews must perform work in compliance with applicable Occupational Health and Safety Act (OSHA) standards, to include Section 8 1910.269 and the National Electric Safety Code;
- Assisting the Authority's Line Department on the respective islands with projects assigned by the Line Superintendent of the Authority;
- Installing /transferring communication devices related to the metering of electricity per the guidelines listed in the Device Installation Guidelines attached hereto as Appendix "E"

The Scope of 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 May 4, 2020 attached hereto as Appendix "A"
2. The Authority's Request for Proposal PR-26-20 and cover letter dated May 5, 2020. This document is attached hereto and incorporated by

reference herein as Appendix "B"

3. The Authority's Construction Standards 2018 Edition incorporated by reference herein as Appendix "C"
4. The Authority's Composite Pole Detail Design Drawing incorporated by reference herein as Appendix "D"
5. The Authority's Device Installation Guidelines incorporated by reference herein as Appendix "E"
6. The Authority's Addendum I to PR-26-20 dated May 20, 2020 incorporated by reference herein as Appendix "F"
7. The Authority's Addendum II to PR-26-20 dated May 28, 2020 incorporated by reference herein as Appendix "G"
8. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "H"
9. The Contractor's response to the Authority's Request for Proposal dated June 10, 2020 incorporated by reference herein as Exhibit "A"

2. **TERM:** This Contract shall take effect upon its full and final execution by the Parties and issuance by the Authority and the execution date as agreed upon between the Parties as contained in the written Notice to Proceed (hereinafter "Effective Date"). The contract shall terminate twenty-four (24) months from the effective date.

3. **CONSIDERATION:** The consideration shall be based upon rates as outlined in the Contractors response to the Authority's Request for Proposal, PR-26-20, dated June 10, 2020 identified as Exhibit "A". Consideration for the Work shall also be subject to the Authority's Request for Proposal, PR-26-20, dated May 4, 2020 attached hereto 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 the Contractor if such taxes are not waived during the emergency.

**4. TERMS OF PAYMENT:** Contractor shall submit itemized and only duly certified bi-weekly invoices to the Authority. Payment terms are Net 60 days after approval of the invoice by the Authority's Project Manager. 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 that the Authority, when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by the Virgin Islands 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 that for the purposes of complying with Title 33, Section 44 of the Virgin Islands Code, the Authority shall withhold and forward to the V.I. Bureau of Internal Revenue the sum of or such amounts 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 and payment of gross receipts taxes shall be the sole responsibility of the Contractor. The Authority shall not be responsible in any manner for any 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 unlikely event any overpayment is made to the V.I. Bureau of Internal Revenue, the Contractor shall seek repayment from V.I. Bureau of Internal Revenue and not the Authority. Upon written request of the Contractor directed to the Authority's Comptroller, the Authority agrees to provide Contractor with documentation confirming that gross receipts withheld under this agreement were paid to the V.I. Bureau of Internal Revenue in accordance with the provisions herein.

In the event the contract is amended, and the consideration herein increases or decreases, the appropriate amount of Gross Receipt Taxes to reflect the increase or decrease in the consideration will be adjusted.

**6. BUSINESS LICENSE:** The Contractor and, if applicable, any of its Subcontractors must comply with all U.S. Virgin Islands' licensing laws in connection with its business operation(s). The Contractor shall obtain all necessary and applicable license(s) and present copies to the Authority at the time of contract execution. Failure to present copies of license(s) shall be grounds to consider the Contract as void, or Authority may terminate this agreement if the Contractor is provided additional time to secure its license and fails to do so in a timely manner

**7. 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.

**8. INDEMNIFICATION:** If the Authority is entitled to defense and indemnification under this Agreement and if 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.

**9. 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 attorneys of the Authority fees in connection with any action taken by the regulator in this matter. Additionally, Contractor shall pay for the expenses associated with clean up or remediation of any environmental violations caused by it.

**10. 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. NESC                    National Electric Safety Code

The contractor shall also comply with all applicable U. S Virgin Islands' fire, health, environmental and public safety codes.

**11. COVID 19 REQUIREMENTS:**

Contractor shall, during the pendency of this agreement, develop a plan to ensure the health and safety of its workforce during the COVID-19 Pandemic. The Authority recommends the Contractor utilize the guidance referenced in the Electric Subsector Coordinating Councils (ESCC) Revision #2 document dated May 5, 2020, as well as other applicable OSHA and CDC guidance documents in the preparation of its plan. At execution of this agreement, Contractor shall present the Authority with a copy of its COVID-19 plan.

Contractor employees and subcontractors performing work for the Authority are required to adhere to the attached Contractor COVID 19 Protocols, a copy of which is attached hereto

and made a part of this agreement as Appendix A. Each employee of the Contractor performing work for the Authority who has traveled within the past three months or has recently arrived in the Territory must fill out the attached form, which form must be submitted to the Authority's Human Resources Department.

The Contractor, with no exception, will be responsible for ensuring compliance with all the requirements stated herein.

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

The Authority designated 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](mailto:niel.vanterpool@viwapa.vi)

The Contractor designates the following individual:

Delvin Kelly  
8787 Interstate 20  
Eastland, Texas 76448  
(254) 653-2950  
[dkelly@birdelectricin.com](mailto:dkelly@birdelectricin.com)

**13. 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.

**14. 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.

**15. 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 dated May 4, 2020. A copy of the insurance certificate must be presented to the Authority's Contracting officer upon contract execution.

**16. 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 May 4, 2020 attached hereto as Appendix "A"
2. The Authority's Request for Proposal PR-26-20 and cover letter dated May 5, 2020. This document is attached hereto and incorporated by reference herein as Appendix "B"
3. The Authority's Construction Standards 2018 Edition incorporated by reference herein as Appendix "C"
4. The Authority's Composite Pole Detail Design Drawing incorporated by reference herein as Appendix "D"
5. The Authority's Device Installation Guidelines incorporated by reference herein as Appendix "E"
6. The Authority's Addendum I to PR-26-20 dated May 20, 2020 incorporated by reference herein as Appendix "F"
7. The Authority's Addendum II to PR-26-20 dated May 28, 2020 incorporated by reference herein as Appendix "G"



8. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "H"
9. The Contractor's response to the Authority's Request for Proposal dated June 10, 2020 incorporated by reference herein as Exhibit "A"

In the event of any inconsistencies between the written agreements comprising the Contract, the matter will be resolved according to the following descending order of precedence: (1) This Contract; (2) the Authority's General Contract Terms attached as Appendix "A", and (3) the Authority's Request for Proposal PR-26-20 and Addendums thereto attached as Appendices "B", "F" and "G", Construction Standards referenced herein as Appendix "C", and (6) Composite Pole Detail Design Drawing referenced herein as Appendix "D", and (7) Device Installation Guidelines referenced herein as Appendix "E", and (8) the Contractors procurement response received on June 10, 2020 attached as Exhibit "A". This contract and contract documents constitute the entire agreement between the Parties hereto, and all prior understandings or communication, written or oral, with respect to the subject matter of this Contract are merged herein.

**17. GENERAL CONTRACT TERMS:** This Contract is subject to the Authority's General Contract Terms with Federal Requirements attached hereto and made a part hereof as Appendix "A". The following provisions of the Authority's General Contract Terms are modified as indicated:

**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  
Revise a (ii) to change the number "thirty (30)" to the number "sixty (60)".

Clause 19 – PATENT INFRINGEMENT

Delete section in its entirety

**18. 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.

**19. GOVERNING LAW:** The laws of the 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.

**20. 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 extend 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.

**21. 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 received, via email, 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: Brian Bird  
Chief Executive Officer  
Bird Electric Enterprises, LLC  
8787 Interstate 20  
Eastland, TX 76448

**22. 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.

**23. 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.

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

  
\_\_\_\_\_  
WITNESS

**BIRD ELECTRIC, INC.**: Bird Electric Enterprises, LLC

By:   
\_\_\_\_\_  
Brian Bird  
Chief Executive Officer

  
\_\_\_\_\_  
WITNESS

**V.I. WATER & POWER AUTHORITY**

By:   
\_\_\_\_\_  
Lawrence J. Kupfer  
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Lorelei Farrington  
General Counsel

Attachments