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

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VIRGIN ISLANDS WATER AND POWER AUTHORITY
GENERAL CONTRACT TERMS

1. DEFINITIONS

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

a. The term **"Work"** shall mean all work required to construct and/or install the facility or perform as called for by the Contract and described in detail in the Specifications or Request for Proposal, and shall include any alternatives or exceptions to the Specifications incorporated in the bid and all work required by these 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, the facility involved or 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 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 the area within which the facility is to be constructed and/or installed.

g. The term **"Contracting Officer"** shall mean the person executing this Contract on behalf 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.

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, site preparation, construction and/or installation and testing and 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 duties or responsibilities thereunder.

c. Any provisions of the Contract which appear to give the Authority a 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 complete and undivided responsibility for the means by which the Work is to be performed.

3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

a. The Contractor agrees to commence the Work promptly after award of the Contract and to complete it no later than the Contract completion date.

b. The Contractor shall furnish and maintain at the Site 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.

4. PERMITS AND RESPONSIBILITY FOR WORK, ETC.

The Contractor shall, without additional expense to the Authority, obtain all licenses and permits required for the prosecution of the Work.

5. SITE

a. The Site will be furnished to the Contractor by the Authority in its presently existing condition, except as otherwise provided herein.

b. The Contractor represents that he has examined the Site and has taken all other reasonable steps necessary to a full understanding of the physical conditions at the Site and the difficulties which may be encountered in performing the Work because of such conditions, and agrees that his obligation to complete the Work includes all risks due to physical conditions at the Site existing as of the date of his bid. Notwithstanding the foregoing, the Authority assumes the responsibility for apprising the Contractor of any existing underground utilities, which are not visible on inspection, or shown on the available site description drawings, but the Authority guarantees neither their location nor their elevations.

c. Information respecting the Site given in the Specifications or in any drawings is believed to be reasonably correct, but the Authority does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.

6. RESPECTIVE RESPONSIBILITIES OF THE PARTIES AT THE SITE

a. The Authority shall establish such general reference points at the Site as will enable the Contractor to proceed to perform the Work with minimum interruption or delay and shall protect and preserve the established reference points and make no change in their location.

b. The Contractor shall perform the Work at the Site in such manner as not to damage existing facilities or jeopardize or unduly interfere with their continued operation. The Authority in turn

shall not operate said facilities in such manner as not to jeopardize or unduly interfere with the performance of the Work.

c. The Contractor shall locate all existing underground utilities such as cable, conduit, water pipes, sanitary lines, etc., by hand excavation and shall carefully protect them. Damage shall be immediately repaired by the Contractor at his own expense. Where connections to existing plant equipment are required, they shall be made only with the advance approval of the Contracting Officer.

d. The Authority shall furnish, at its expense, reasonable amounts of water and electric power necessary for the prosecution and performance of the Work at the Site: Provided that power shall be at voltages available at the existing power facilities and, further, the Authority shall not be obligated to purchase water. The Authority shall furnish reasonable access to and use of other utilities at the Site as mutually agreed upon, to the extent that in its sole judgment, such access or use will not hamper or interfere with the operation of existing facilities.

e. The Contractor shall be responsible for furnishing proper protection for the health and life of personnel, for the public, for the Work and all materials, machinery, equipment, tools, and supplies used in the performance thereof, and for the property of others.

f. The Authority shall provide access to the Site at all times during the term of the Contract: Provided, however that the Contractor shall be responsible for improving and or maintaining any access roads used in the performance of the Work. The Authority assumes no responsibility for the condition or maintenance of any road that may be used by the Contractor in traveling to and from the Site.

7. ACCESS TO WORK IN PROGRESS

a. Subject to federal security laws and regulations, the Authority and its representatives shall at all times have reasonable access to the facilities of the Contractor, his/her engineers, the manufacturing division and subcontractors, to ascertain the progress of the Work.

b. The Authority and its representatives shall also have reasonable access at all times to work in progress at the Site, and the Contractor shall provide sufficient, safe and proper facilities

for such access and inspection, it being understood that such access shall not unreasonably interfere with the orderly completion of the Work by the Contractor.

8. PROGRESS REPORTS AND WORKING SCHEDULES

The Contractor shall prepare and furnish if required progress reports of the Work. When requested by the Authority, the Contractor shall furnish the underlying documents used in the preparation of any progress report including 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 documents instead.

9. SPECIFICATIONS AND DRAWINGS

INTENTIONALLY OMITTED

10. 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 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 until ordered in writing by the Contracting Officer. Compensation, for changes, 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. The Authority reserves the right to remove any one of the bid items from the scope of work for the exact value noted in the bid schedule throughout the duration of the project if necessary.

11. SUSPENSION OR INTERRUPTION OF WORK

a. The Contracting Officer may order in writing, 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 suspension 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.

12. 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, become the property of the Authority.

13. DELAYS AND DAMAGES

a. 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 Contract.

14. TERMS OF PAYMENT

Payments will be in accordance with the following lump sum provision or progress provision at the Contractor's option:

a. **Progress payment provision** - This is an alternative payment provision to the lump sum provision under paragraph (a) hereof.

(i) Progress payments will be made within thirty (30) days after the issuance by the Contractor of an itemized and duly certified invoice based upon completion of each increment of Work as listed under paragraph (b-ii) hereof.

(ii) 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, if he finds that satisfactory progress is being made, may make any of the remaining partial payments in full.

(iii) All material and work covered by partial payment 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.

b. 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. After 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 excepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

c. 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 (1) workmanship, and (ii) any claims, which the Authority may have against the Contractor. Any overpayment to the Contractor shall, unless otherwise adjusted, be repaid to the Authority upon demand.

15. EQUIPMENT AND CONSTRUCTION WARRANTIES

a. The Contractor warrants, except as otherwise provided in this Clause, that all equipment manufactured or furnished by him/her, his/her subsidiaries, and his/her suppliers, and all construction and workmanship included in the Work, shall be of the kind and quality called for in the Specifications and shall be free from defects resulting from poor workmanship, materials or selection of materials.

b. The obligation of the Contractor under this warranty shall be limited to repairing or replacing, free of charge in place at the Site, any part of said equipment, construction or workmanship, which proves defective during the first twelve (12) months, commencing with the date of acceptance of the Work, but in no event later than twenty-four (24) months from the date of

arrival at the Site of any item of equipment: Provided that the notice of such defect and proof thereof is promptly sent to the Contractor, and (ii) during the said twenty four (24) months said equipment is not used beyond its capacity and shall have been operated and maintained in a proper manner and under competent supervision and shall not have been subjected to accident, alteration, abuse, or misuse. The Contractor may use Authority employees, to make such repairs and, or replacements which can be made at the Site and are within the normal competence and capability of regular operation and maintenance personnel provided that the use of such personnel shall not interfere with the normal operation and maintenance of the Authority's facilities. The cost associated with the use of the Authority's employees shall be deducted from the cost of the project.

16. SHOP TESTS AND INSPECTION

INTENTIONALLY OMITTED

17. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES

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

b. Should any amendments or additions to territorial laws, codes, orders or regulations subsequent to the date of advertisement for bids affect any designs or requirements set forth in the Specifications 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 10 hereof.

c. Subject to Clause 17 hereof, the Contractor represents that all of the equipment and construction materials shall be of suitable grade the purpose intended and that the Work shall be in accordance with acceptable United States engineering, construction and commercial practices.

18. OTHER CONTRACTS

The Authority may undertake or award other contracts for work on the same site. The Contractor shall fully cooperate with such other contractors and the Authority. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other contractor or by the Authority.

19. PATENT INFRINGEMENT

1. The Contractor shall indemnify and save the Authority harmless from damages arising out of any claims that the possession or use of the materials or equipment manufactured or furnished by the Contractor, its subsidiaries or any of its suppliers infringe on Letters Patent of the United States of America in accordance with the following:

a. In the event that the use of the Work or any part thereof shall be enjoined by judicial decree, the Contractor shall (i) replace, at its own expense, any materials, or equipment or part thereof, the use of which shall have been enjoined with non-infringing materials or equipment with equivalent capacity and performance, or (ii) procure for the Authority the right to continue to use the materials or equipment or part thereof, or (iii) in the case of equipment or part thereof, modify the same so as to avoid such claims; and

b. The Contractor, with the assistance and cooperation of the Authority, shall defend any suit or prosecution brought against the Authority based upon such claim of patent infringement and shall pay all damages, costs and expenses, including attorney's fees, in connection therewith or arising therefrom.

20. INSURANCE

The insurance requirements are as set forth in the attached Exhibit A.

21. FEMA/HUD GENERAL PROVISIONS

The terms and conditions of HUD General Provisions, a copy of which is attached hereto and made a part of these General Contract Terms as Exhibit B are applicable to this Agreement.

22. PERFORMANCE BOND

1. The Contractor shall furnish a performance bond in accordance with following table:

$0	to	$1,000,000	- 100% of contract value
$1,000,000	to	5,000,000	- Not less than 80% of contract
$5,000,000	to	10,000,000	- Not less than 60% of contract

$10,000,000 to 25,000,000 - Not less than 50% of contract
$25,000,000 and Over - $10,000,000.00

Bonds in amounts of $1,000.00 or less will be in multiples of $100 and in amounts exceeding $5,000.00 in multiples of $1,000: Provided that the amount of the bond shall be fixed by the Authority at the lowest sum that fulfills all conditions of the Contract.

Bonds shall remain in effect throughout the entire period of the Work, as well as any warranty period, which latter period shall not be less than one (1) year from the date of the Authority's final acceptance of the Work.

2. The surety on any bond furnished in pursuance of this Contract must be authorized to do business in the Virgin Islands (See Treasury Department Circular 570 dated June 1, 1965.) and have a minimum Best's rating of A-.

3. If any surety becomes unacceptable to the Authority, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Authority, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Authority and of persons supplying labor or materials in the prosecution of the Work.

4. Performance Bonds exceeding $75,000.00 must comply with this paragraph, unless modified with the approval of the Governing Board.

23. 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 Contractor, 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 employees, 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 the Authority to contribute to any settlement so long as the demand is within Contractor's insurance policy limits.

24. LIENS

1. The Contractor shall indemnify and save the Authority harmless from all laborers, material men's, and mechanics' liens on the Work or the Site, or the Authority's interest therein, arising out of the services, labor, equipment and materials furnished by the Contractor (or any of its subcontractors) under the Contract, and shall keep the Work and the Site free and clear of all liens and encumbrances arising from the performances of the Work.

2. The final payment for the Work, as provided for in Clause 15 shall not become due until the Contractor shall have supplied to the Authority a complete release of all laborers', material men's and mechanics' liens arising out of the services, labor and materials furnished by the Contractor (or any of his subcontractors) under the Contract. An affidavit that, so far as the Contractor has knowledge or information, the releases include all the labor and materials for which a lien could be filed shall also be supplied: Provided that the Contractor may, if any subcontractor refuses to furnish a release, furnish a bond satisfactory to the Authority to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Authority all monies that the Authority may have to pay in discharging such lien, including all costs and expenses, including attorney's fees, said refund to be made within thirty (30) days after the submission by the Authority

to the Contractor of an invoice for such monies.

25. CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty 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.

26. GRATUITIES

1. The Authority may, by written notice to the Contractor, terminate the right of the Contractor to proceed under 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 toward securing the Contract or securing favorable treatment with respect to the performance of such Contract. The Authority's findings hereunder shall be conclusive.

2. In the event this Contract is terminated pursuant to paragraph a, 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 not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

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

27. RIGHT TO AUDIT

1. The Authority reserves the right to review original estimate files, change order estimate files, detailed worksheets; subcontract and supplier proposals for both successful and unsuccessful bidders; all project-related correspondence; subcontractor and supplier change order

files (including detailed documentation covering negotiated settlements); back-charge logs and supporting documentation; any records detailing cash, trade or volume discounts earned and insurance proceeds, rebates, or dividends received.

2. The contractor shall provide the Authority with copies of records in computer-readable format as well as a hard copy.

3. The Authority reserves the right to audit any supporting evidence necessary to substantiate charges related to the contract or purchase order (both direct and indirect costs, including overhead allocation as may apply to costs associated with the contract or purchase order).

4. The Authority reserves the right to audit any records necessary to evaluate and verify (a) contractor compliance with contract requirements, (b) compliance with the Authority's business ethics polices, and (c) compliance with provisions for pricing change orders, payment, or claims submitted by the contractor or any of payees.

5. The contractor's records shall be subject to audit throughout the term of the contract and for a period of five years after final payment or longer, if required by law.

6. The contractor shall include the Authority's right to audit provisions in contracts of all subcontractors, insurance agents, material suppliers, or any other business entity providing goods and services

7. The Contractor shall permit the Authority to interview any of the contractor's current and former employees during the audit.

8. The Contractor shall provide adequate work space and access to photocopy machines.

9. The Authority shall recoup the cost of the audit if the audit detects over charges greater than 0.5 % of the total contract billings.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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, 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 Islands law.

34. 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.

35. 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."

36. 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."

37. COMPLIANCE WITH THE 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.

38. 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.

39. 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.

40. SUSPENSION AND DEBARMENT

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."

41. BYRD ANTI- LOBBYING AMENDMENT, 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.

42. 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 representatives 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 representatives access to construction or other work sites pertaining to the work being completer under the contract.

43. 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.

44. 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.

45. 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.

46. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS 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.

47. 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."

EXHIBIT A
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 in 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 in 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 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."		
	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. EIL 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 in 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 in transit that will become a part of buildings or structures under construction).

Boiler and machinery coverage on a breakdown basis is to be included in the All Risk policy or provided in 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 B.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 B. 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	

EXHIBIT A
WAPA INSURANCE REQUIREMENTS

	Ordinance or Law		10% 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	$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 WAPA incurs to replace the annual output of the Facility for one year following a covered occurrence, such amount to be determined with WAPA 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 in 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 WAPA 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 • WAPA as an additional insured (General Liability and Excess or Umbrella Liability only)			

			• WAPA 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 WAPA of any renewals or replacements of the required insurances by providing the same documentation required in C.3 above. Such evidence shall be provided prior to the expiration date of the policy that is being renewed or replaced.