

**VIRGIN ISLANDS WATER AND POWER AUTHORITY**

and BDO USA, LLP

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**SC-24-22**

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**VIRGIN ISLANDS WATER AND POWER AUTHORITY  
and BDO USA, LLP**

**THIS CONTRACT** (including all addenda attached hereto, the “Contract”) is made and entered this 15 day of November, 2022 by and between the **VIRGIN ISLANDS WATER AND POWER AUTHORITY** with an address of 9720 Est. Thomas, St. Thomas, United States Virgin Islands 00802 (hereinafter referred to as “Authority”) and **BDO USA, LLP** (hereinafter referred to as “Consultant” or “BDO”) with an address of 12505 Park Potomac Ave, Suite 700, Potomac, MD 20854, and shall be effective as outlined in Section 3(a) hereto. Authority and Consultant may be referred to in this Contract individually as a “Party” or collectively as “Parties”. BDO shall, per the terms of this Contract, conduct for the Authority a financial audit, single audit for FY 2021 and FY 2022 in accordance with the terms set forth herein.

**1. DEFINITIONS**

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

- a. The term “**Work**” or “**Scope of Work**” shall mean all work or services described in the Specifications.
- b. The term “**Specifications**” shall mean the detailed description of, and requirements for, Work to be performed, which are set forth and attached in the Engagement Letter (as defined below).
- c. The term “**Authority**” shall have the meaning attributed thereto in the preamble above, which shall be the purchaser and owner of the Work.
- d. The term “**Consultant**” shall have the meaning attributed thereto in the preamble above.
- e. The term “**Contract**” shall have the meaning attributed thereto in the preamble above.
- f. The term “**Site**” shall mean anywhere the work is required to be performed.
- g. The term “**Contracting Officer**” shall mean the Executive Director of the Authority and any other officer or employee who is properly designated and shall include, except as otherwise provided, the authorized representative of the Contracting Officer acting within the limits of his authority. The Contracting Officer shall not mean the Project Coordinator.
- h. The term “**Engagement Letter**” shall mean, collectively, (i) the Agreement to Provide Services, attached hereto as Appendix A. The terms of the Engagement Letter are hereby incorporated by reference and made a part of this Contract, provided that in the event of a conflict or inconsistency between this Contract and the Engagement Letter, the terms of this Contract shall govern and control.

- i. The term “**Contract Price**” shall mean the aggregate fees and expenses identified in Clause 11 of the Contract.
- j. The term “**Effective Date**” shall have the meaning set forth in Section 3(a) hereto.

## **2. GENERAL STATEMENT OF RESPONSIBILITY OF THE CONSULTANT**

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

b. The Consultant shall be an independent Consultant 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 Consultant 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 Consultant shall not assign the Contract or any of his/her duties or responsibilities thereunder.

c. The parties agree that no provision of the Contract shall give the Authority the right to direct the Consultant as to the means by which the Work is to be performed, or to exercise any control over the Work, or shall impose upon the Consultant any obligation to follow the desires of the Authority as to the end results.

d. All services performed or materials provided by Consultant under the Contract shall materially comply with the terms, conditions, and requirements set forth in the Engagement Letter, and shall be done in a professional and workmanlike manner in accordance with the Contract.

e. [Reserved].

f. The Consultant agrees to provide services in accordance with the generally accepted auditing standards (GAAS). The audit will also be conducted in accordance with the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance or UG).

## **3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK**

- a. This Contract shall commence upon execution by the parties of the Contract and the Engagement Letter ( the “Effective Date”) and work shall be performed as follows:
  - FY 2021 Audit –The target date for the Authority to close its FY 2021 books is November 30, 2022.

- FY 2022 Audit –The target date for the Authority to close FY 2022 its books is 60 days after the completion of the FY 2021 Audit.
- The target completion date by the Consultant of the FY 2021 Audit and the FY 2022 Audit shall be four (4) months following the date the Authority closes its books for each respective fiscal year and provides the Consultant with access to such books. Each target completion date is based on the assumptions that (i) the number of audit adjustments identified will be minimal, (ii) there will be no significant changes in crucial systems affecting key financial statement accounts, (iii) there will be no significant changes in the internal controls, key personnel or structure of the Authority and (iv) the Authority will prepare certain schedules and analyses for the Consultant and make available to the Consultant documents for the audit as and when requested.
- The Authority’s Governing Board awarded a contract to BDO USA, LLP, to provide the services referenced herein for the fiscal years audit ending June 30, 2021 and June 30, 2022.

Except to the extent the parties otherwise agree in a separate writing, the Contract shall terminate on December 31, 2023, or such additional time as the Parties agree that the Consultant shall reasonably require for completion of the Work.

- b. The Consultant shall furnish and maintain during the performance of the Work, a competent 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 Consultant or any subconsultant if in the judgment of the Contracting Officer such removal is necessary to protect the interest of the Authority.
- c. The Contract completion date shall be the date specified in the Contract, unless the parties have agreed to an acceptable later date, except that the completion date may be extended under Clauses 10 or 13 hereof. The Work shall be deemed to be completed upon acceptance by the Contracting Officer following written notification from the Consultant that the Work has been performed in accordance with the Contract scope.

#### **4. LICENSES AND RESPONSIBILITY FOR WORK, ETC.**

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

#### **5. LOCATION OF WORK**

The Work shall be performed at the Site or in the Consultant’s office or at a location mutually satisfactory to both parties and such location shall not be changed without approval of the Project Coordinator.

## **6. PROGRESS REPORTS AND WORKING SCHEDULES**

The Consultant shall prepare progress reports of the Work or such reports as required by the Project Coordinator.

## **7. CHANGES**

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

## **8. SUSPENSION OR INTERRUPTION OF WORK**

a. The Contracting Officer may in writing, order the Consultant 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 Consultant the performance of all or any part of the Work is suspended or interrupted hereunder for any unreasonable period of time, the Contract Price shall be adjusted for any increase in the cost of performing the Work excluding profit necessarily caused by such unreasonable period of suspension or interruption, and the Contract shall be modified in writing accordingly. Provided that a claim therefor shall be asserted in writing as soon as practicable after the termination of such adjustment or interruption; and provided further that no adjustment shall be made to the extent that performance by the Consultant would have been prevented by other causes, even if the Work had not been so suspended or interrupted.

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

## **9. A. TERMINATION FOR DEFAULT**

i. If the Consultant 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 five (5) 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 further written notice the Consultant's right to proceed with the Work or such part thereof as to which there has been a default.

ii. The Authority may terminate this Agreement, in whole or in part at any time and due to any circumstance and without serving prior notices. If the Agreement is so terminated, Consultant shall be paid for all services performed to the date of termination including all expenses. Any progress payments made to Consultant shall be credited toward any termination payment due. Such termination payment will constitute Consultant's full compensation to which it is entitled under this Agreement.

iii. Upon receipt of a termination notice, Consultant shall: (a) promptly discontinue all Work to the extent directed; and (b) deliver or otherwise make available to the Authority, upon the Authority's full and final payment for Work performed and reasonable costs incurred up to the date of termination, all completed audit reports identified as deliverables in the Specifications.

## **B. TERMINATION FOR CONVENIENCE**

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

(b) Upon termination pursuant to Sections 9.B(a) or 9.C, the Consultant shall:

i. cease operations as directed by the Authority in the notice; take actions necessary, or that the Authority may direct for the protection and preservation of the Work; and

ii. 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 of this Contract for any reason other than by the Authority pursuant to Section 9(a)(i) of this Contract following Consultant's uncured material breach of the terms of this Contract, the Consultant shall be entitled to receive payment for Work performed and reasonable costs incurred up to the date of termination.

## **C. TERMINATION TO THE EXTENT REQUIRED UNDER APPLICABLE LAW, REGULATION, OR PROFESSIONAL STANDARD**

Upon written notice to the Authority, the Consultant may terminate this Contract if the Consultant reasonably determines that it is unable to perform the Work in accordance with applicable professional standards, laws, or regulations. If the Consultant elects to terminate this Contract for any reason provided for in this Contract or the Engagement Letter, the professional services engagement pursuant to which the Consultant agrees to perform the Work on behalf of the Authority will be deemed to have been completed upon written notification of termination, even if the Consultant has not completed the Work.

## **10. DELAYS AND DAMAGES**

The Consultant shall not be liable for any failure or delay in the completion of the Work resulting from any cause beyond its control and without its 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 Consultant in the performance of a contract with the Authority, fires, floods, epidemics, unusually severe weather, strikes, lockouts, embargoes, wars, riots, or delays of subconsultants or suppliers arising from unforeseeable causes beyond the control and without the fault of or negligence of both the Consultant and such subconsultants and suppliers provided, that the Consultant 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 Consultant 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.

## **11. CONTRACT PRICE**

The Work associated with the FY 2021 and FY 2022 financial audit and report shall be performed in exchange for the Contract Price as set forth below:

FY 2021 Audit - \$360,000.00 (to include the Single Audit)

FY 2022 Audit - \$360,000.00 (to include the Single Audit)

The Work associated with the FY 2021 and FY 2022 financial audits and report shall be performed in exchange for a total cost of \$720,000.00 or such other contract price as the parties shall agree to in writing.

This Contract Price associated with the referenced FY 2021 and 2022 financial audit shall be subject to change only in accordance with Clause 7 hereof and shall be inclusive of all duties, fees, and levies, and all taxes imposed with respect to the performance of the Work.

## **12. TERMS OF PAYMENT**

Payments and invoicing will be in accordance with the terms set forth in the Section entitled "Fees" in the Engagement Letter.

## **13. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES**

- a. The Consultant shall comply strictly with all federal and local statutes, codes, and regulations.



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

#### 14. INSURANCE

The Insurance requirements are as set forth in the attached Appendix C, with the following amendments.

- a. Delete all Insurance requirements except for Section (A)(5) Professional Liability.
- b. Section (A)(5) Professional Liability is changed to “Per claim and in the aggregate.”
- c. Section (A)(5) Professional Liability concerning the Minimum Limit is changed to \$1,000,000.00.
- d. Notwithstanding anything to the contrary in Appendix C, the Parties agree that the Consultant’s Professional Liability Insurance is and shall be a claims-made policy.

#### 15. BUSINESS LICENSE

Unless a waiver of the business license is obtained from the Virgin Islands Department of Licensing and Consumer Affairs, the Consultant must comply with all Virgin Islands' laws with respect to licensing which must be obtained in connection with its business operation(s).

All necessary and applicable license(s) shall be obtained by the Consultant and presented to the Authority at contract execution upon the request of the Authority.

#### 16. INDEMNIFICATION FOR INJURY AND DAMAGE CLAIMS

(a) Consultant shall indemnify, defend, and hold the Authority and its servants, employees and agents (collectively, the “**Authority Group**”) harmless against any and all Third-Party Claims (as defined below) that are imposed upon or asserted against any member of the Authority Group arising after the commencement of the Contract, brought for damages or alleged damages arising out of any injury or loss of life of any person or real 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 Consultant, its servants, employees, agents, invitees, or to Consultant’s subconsultants, Subconsultant employees, agents, or invitees, or to any other person, or property of Contactor, irrespective of how the same may be caused, whether from action of the elements, or acts of negligence of the Authority, its employees or agents, the Consultant, its servants, employees, agents, or invitees, or the Consultant’s Subconsultants, subconsultant employee, agents and invitees. It is the intention of the parties that this paragraph shifts the cost of all insurance, whether benefitting Consultant or the Authority, or both, to the Consultant.

(b) If the Authority is sued for acts arising out of those set out in (a) above, the Consultant 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 Consultant, its servants, employees, agents, and its carrier will not look to or require the Authority to contribute to any settlement related to Third-Party Claims indemnifiable under Section 16(a).

(d) Because of the importance of management's representations to an effective audit, the Authority agrees, subject to prevailing laws and regulations, to release and indemnify the Consultant and its partners, principals, employees, Consultants, and agents (collectively, the "**Consultant Group**") from and against any Third-Party Claim imposed upon or asserted against any member of the Consultant Group arising after the commencement of the Contract attributable to any knowing misrepresentations by management of the Authority.

(e) Notwithstanding any other provisions of this Agreement to the contrary, (i) neither the Authority Group nor the Consultant Group shall be liable for any claims damages, injuries, suits, actions, causes of action for damages or alleged damages, orders, judgments, expenses, or costs (including, without limitation, reasonable attorney's fees) whether in contract, statute, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action (each a "**Claim**") for punitive, special, indirect, incidental or consequential losses or damages, including loss of profits, use, opportunity, revenues, financing, bonding capacity, or business interruptions; and (ii) in no event shall the liability of the Authority Group or the Consultant Group for any Claim exceed the Contract Price, provided that the limitation of liability set forth in Section 16(e)(ii) shall not apply (A) in a Claim related to Consultant's or the Authority's indemnity obligations, (B) in a Claim finally determined to have resulted from the fraud or willful misconduct of Consultant or the Authority. "**Third-Party Claim**" means a Claim imposed upon or asserted against any member of the Authority Group or the Consultant Group by any person other than

(i) a Party or (ii) person providing or receiving indemnity under this Contract.

## 17. RIGHT TO AUDIT

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

The Consultant shall, at all times during the term of this Agreement and for a period of five (5) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials.

The Consultant shall at any time requested by the Authority, whether during or after completion of this Agreement, and at Consultant's own expense make such records available for off-site inspection by the Authority along with an adequate workspace and access to photocopying machines. Such records shall be made available to the Authority during normal business hours and subject to a three-day written notice.

In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Authority.

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

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

## **18. CONTINGENT FEES**

The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Contract nor is there any agreement or understanding for a commission, percentage, brokerage, or contingent fees, in connection with obtaining this contract.

For breach or violation of this provision the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **19. GRATUITIES**

The Authority may, by written notice to the Consultant, terminate this Contract if it is found by the Authority, after notice and hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Consultant, or any agent or representative thereof, to any officer or employee of the Authority with a view towards securing the Contract or securing favorable treatment with respect to the performance of such Contract. The Authority's findings hereunder shall be conclusive. This Section 19 shall not prohibit normal and customary business entertainment or the giving of business mementos of nominal value; provided, however, that all such payments shall be lawful, reasonable, and directly related to the business of the Authority and Consultant.

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

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

## **20. 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 Consultant to his home office, and in the case of the Authority to the Contracting Officer.

## **21. 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.

## **22. 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 V.I.C 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 V.I.C. Section 43(a). Despite the requirements under Title 33, Section 44, the Consultant agrees that calculation of gross receipts taxes shall be the sole responsibility of the Consultant. 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.

**23. GOVERNING LAW; DISPUTE RESOLUTION**

The laws of the United States Virgin Islands shall govern the interpretation of this Contract and any Dispute (as defined below) arising hereunder (except if there is no applicable state law providing for such arbitration, then the Federal Arbitration Act shall apply) and the substantive law of such state shall be applied without reference to conflicts of law rules. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

Any dispute or claim between the Authority and Consultant arising out of or relating to this Contract or a breach of the terms of this Contract, including, without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and disputes regarding attorney fees and/or costs charged under this Contract (each, a “**Dispute**”) shall be submitted to binding arbitration before the American Arbitration Association, and subject to the Commercial Arbitration Rules. The arbitration proceeding shall take place in the United States Virgin Islands, unless the parties agree in writing to a different location. The parties shall bear their own legal fees and costs for all claims. The arbitration proceedings shall be confidential.

Each of the Authority and Consultant acknowledges that by agreeing to this provision, it is giving up the right to litigate claims against the other, and important rights that would be available in litigation, including the right to trial by judge or jury, to extensive discovery and to appeal an adverse decision. Each of the Authority and Consultant acknowledges that its authorized representative(s) have read and understand this arbitration provision, and that it voluntarily agrees to binding arbitration.

The Authority shall bring no claim or action arising out of or relating to this Contract or the Work provided under this Contract more than one (1) year following the completion of the Work provided under this Contract to which the claim relates. This paragraph will shorten, but in no event extend, any otherwise legally applicable period of limitations on such claims.

**24. EFFECTIVE DATE**

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

**25. 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.

**26. OTHER REQUIREMENTS**

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

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

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

## **27. STANDARD OF CARE**

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

## **28. FALSE CLAIMS**

Consultant warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, the Virgin Islands Water and Power Authority, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Consultant acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Island law.

## **29. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**

The Consultant shall perform and complete the Work in accordance with the Contract and the Contract Documents. The "Contract Documents" includes:

1. The Authority's Request for Proposal, PR-13-22 and cover dated December 6, 2021, attached hereto and incorporated by reference herein as Appendix "B";
2. The Authority's Insurance Requirements are attached hereto and incorporated by reference herein as Appendix "C"; and
3. The Consultant's response to the Authority's Request for Proposal, dated January 5, 2022, attached hereto and incorporated by reference herein as Appendix "D".

In the event of any conflicts or inconsistencies between this Contract and the Contract Documents, such conflict will be resolved according to the following descending order of precedence: (1) this Contract; (2) the Authority's Insurance Requirements (3) the Engagement Letter; (4) the Authority's Request for Proposal, PR-13-22; and (5) the Consultant's response to the Authority's Request for Proposal, PR-13-22.

IN WITNESS WHEREOF, each Party hereto has duly executed this Agreement on the date indicated below.



WITNESS

BDO USA, LLP




NEENA MASIH  
Assurance Partner

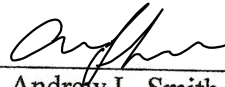
11-14-22

Date

V.I. WATER AND POWER AUTHORITY



WITNESS



Andrew L. Smith  
Executive Director/CEO

11.15.2022

Date

APPROVED AS TO LEGAL SUFFICIENCY:



DIONNE SINCLAIR, ESQ. 11-15-2022 Date

General Counsel  
Attachments