



VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
SAINT THOMAS
U.S. VIRGIN ISLANDS 00804

**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND POWER AUTHORITY
AND MARCO ST. CROIX, INC.**

Contract No. SC-02-23

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

This Agreement (hereinafter "the Contract") is entered into this 13 day of September, 2022 by and between the VIRGIN ISLANDS WATER AND POWER AUTHORITY (hereinafter called the "Authority"), located at 9720 Estate Thomas, P. O. Box 1450, St. Thomas, USVI 00804 and MARCO ST. CROIX, INC., (hereinafter called the "Contractor") at mailing address 222 and 223 Kingshill Commercial Park, St. Croix, V.I. 00850, for the supply and installation of approximately 10,800 Linear Feet (LF) of 6-inch C-900 PVC DR-14 water main for the completion of the Hannah's Rest Waterline Rehabilitation Project to include all materials, equipment and labor. The Authority and the Contractor shall jointly be referred to as the "Parties".

WITNESSETH

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

1.SCOPE OF WORK: The Contractor shall supply and install approximately 13,600 LF of 6-inch C-900 PVC DR-14 water main for the completion of the Hannah's

Rest Waterline Rehabilitation Project to include all materials, equipment and labor. All work must comply with applicable federal and territorial laws, codes, orders and regulations. The Contractor shall supply all the manpower, materials, tools equipment, safety devices, knowledge, experience and supervision to complete the project as shown on proposal drawings and noted in specification but not limited necessarily. to complete the Scope of Work (the "Work").

The Scope of Work according to the Authority's Request for Proposal (PR-18-22) (hereinafter the "Work") shall be performed in accordance with the requirements contained in the following documents:

- 1) The Authority's General Contract Terms with Federal Requirements dated April 7, 2019, incorporated by reference herein as Appendix "A";
- 2) The Authority's Request for Proposal, PR-18-22, incorporated by reference herein as Appendix "B";
- 3) The Authority's Request for Proposal, PR-18-22 Addendum I, incorporated by reference herein as Appendix "C";
- 4) The Authority's Request for Proposal, PR-18-22 Addendum II, incorporated by referenced herein as Appendix "D";
- 5) The Authority's Request for Proposal, PR-18-22 Addendum III, incorporated by referenced herein as Appendix E;
- 6) Contractor 's response to the Authority's Request for Proposal, dated June 6, 2022, incorporated by reference herein as Exhibit "A".

The Contractor shall perform the Work in accordance with its proposal response and other submissions referenced herein and shall be responsible for providing the necessary skilled labor to meet the requirements of the Contract.

2.TERM: This Contract shall take effect upon full and final execution by the Parties



and issuance by the Authority of a Notice to Proceed (hereinafter "Effective Date"). The Contract shall terminate one hundred fifty (150) calendar days from the issuance of the Notice to Proceed. Time is of the essence in the Contractor's performance of the Work. To assist the Authority in ascertaining the timeliness of the Contractor's supply of the work, the Contractor shall deliver to the Project Coordinator written progress reports every week stating in detail the progress in the performance of the Work. The Contractor agrees that Work shall be performed regularly, diligently and uninterruptedly at such rates of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Authority that the time for completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the climatic range and unusual prevailing conditions in the Virgin Islands.

3.CONSIDERATION: In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the sum of Three Million One Hundred Ninety Six Thousand Nine Hundred Thirty Six Dollars and 00/100 (\$3,196,936.00). The Contractor shall charge the Authority for the Work in accordance with Exhibit "A";

The Consideration herein shall be for all Work performed by the Contractor pursuant to this Contract. Payment of any taxes, duties, customs, excise or other fees shall be the sole responsibility of the Contractor. Unless otherwise authorized by law, the Authority shall not be responsible in any way for any taxes, customs, duties, excise or other fees.

4.TERMS OF PAYMENTS: All invoices shall be submitted electronically to the Project Coordinator. Invoices should also be submitted to the Grants Management

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Department at grantsmanagement@viwapa.vi. Invoicing shall be submitted upon completion of milestones met for each Phase. All invoices will be based upon thirty (30) days payment terms of approval of the invoices. Payments shall be made on a progress billing and payment method, after review and approval by the Authority's Project Coordinator, in accordance with the below payment schedule:

Mobilization	\$ 319,693.60
Material Acquisition	\$ 431,586.36
(20%) Completion	\$ 294,565.60
(40%) Completion	\$ 410,163.55
(60%) Completion	\$ 494,103.19
(80%) Completion	\$ 613,753.03
(100%) Completion	\$ 633,070.67

Total Contract Consideration	\$3,196,936.00
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***Note: A ten percent (10%) retainage shall be withheld from each progress payment and shall be released to the Contractor upon final acceptance of the Work.**

5.GROSS RECEIPT TAXES: Title 33, Section 44(a) of the Virgin Islands Code, as amended, requires that the Authority, when making a payment under this Contract, deduct and withhold from such payments gross receipts taxes for each payment for Work performed in the Virgin Islands.

Notwithstanding any other provisions of this contract to the contrary, it is agreed between the Parties that that for the purposes of complying with Title 33, Section 44 of the Virgin Islands Code, the Authority shall withhold and forward to the V.I. Bureau of Internal Revenue the sum of One Hundred Fifty Nine Thousand Eight Hundred Forty Six Dollars and 80/100 (\$159,846.80) or such amounts as required by any changes to the law at 33 VIC Section 43(a). Despite the requirements under Title 33, Section 44, the Contractor agrees that calculation and payment of gross receipts taxes shall be the sole

responsibility of the Contractor. The Authority shall not be responsible in any manner for any miscalculation or change in law or additional assessments that may affect the amount due herein. In the unlikely event any overpayment is made to the V.I. Bureau of Internal Revenue, the Contractor shall seek repayment from V.I. Bureau of Internal Revenue and not the Authority. Upon written request of the Contractor directed to the Authority's Comptroller, the Authority agrees to provide Contractor with documentation confirming that gross receipts withheld under this agreement were paid to the V.I. Bureau of Internal Revenue in accordance with the provisions herein.

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

6. BUSINESS LICENSE: Contractor must comply with all Virgin Islands' laws with respect to licensing which must be obtained in connection with its business operation(s). Contractor shall further ensure that all subcontractors hired in connection with this Scope of Work comply with all Virgin Islands business license requirements. All necessary and applicable license(s) for Contractor and its subcontractor(s) shall be obtained by the Contractor and copies presented to the Contracting Officer concurrent with its execution of the Contract. Failure by Contractor to present business license(s) for itself and its subs at the time of execution of the contract by the Contractor may, at the sole option of the Authority, be grounds to rescind the Contract award and consider the Contract void.

7. EMPLOYMENT OF U.S. VIRGIN ISLANDS RESIDENTS: The Contractor shall comply with 24 VIC §126 which requires the following preference for resident workers (i.e. any person capable of performing services or labor and who is a citizen of the United



States or an immigrant alien admitted to the United States for permanent residence under the provision of the Immigration and Nationality Act as amended):

Resident workers shall be given preference in employment in the Virgin Islands in any industry or occupation for which such workers are qualified and available. Nonresident workers shall be employed only to supplement the labor force of available and qualified workers. No resident workers shall suffer any reduction in workweek below 40 hours a week by reason of an employer employing a non-resident worker. No employer shall employ a non-resident worker except in strict accordance with the provisions of this chapter and regulations hereunder. Nothing contained herein shall be construed to interfere with the policy of the Employment Services in canvassing of affiliated state employment services to obtain workers before issuing clearance certification for alien workers.

The Contractor shall comply with requirements of 31 VIC §§ 271 and 272 and Title 24, Chapter 6 (Protection of Resident Workers) and hire Virgin Islands Residents and Resident Workers for work in connection with this contract. Contractor shall also ensure that its subcontractor(s) comply with the legal requirement to hire Virgin Islands residents and Resident Workers in connection with this project and shall require such in their contract(s) with their subcontractor(s). Upon request of the Authority, Contractor shall provide a report and/or information regarding its compliance, and its subcontractor's compliance, with the requirement to hire Virgin Islands Residents and Resident Workers.

Before any vacancies are filled with an individual that is not a resident of the Virgin Islands, Contractor and its subcontractor(s) shall notify the Employment Security Agency of the Virgin Islands Department of Labor in accordance with the requirements of 31 VIC §272 and 27 VIC §303b.

The Contractor understands that its failure to adhere to the requirements referenced herein may result in the application of penalties as imposed by the Department of Labor as outlined in 31 V.I.C. §272 (c)(d). Additionally, Contractor's failure

to comply with the requirements herein may result in termination of this agreement in accordance with the Authority's General Contract Terms attached and incorporated by reference herein as Appendix "A." Further, the Authority shall consider Contractor's non-compliance with the provisions of this section in the award of future contracts.

8.COMPLIANCE WITH DAVIS BACON ACT: The Contractor shall comply with the Davis Bacon and Related Acts (DBRA) as found in the Code of Federal Regulations (Title 29 CFR, parts 1,3,5,6 and 7). Per the DBRA, Contractor and its subcontractors performing this contract on federal contracts shall pay not less than the prevailing wage rates and fringe benefits listed in the Davis-Bacon Wage Rate Determination for corresponding classes of laborers and mechanics employed on similar projects in the area.

9.RELIANCE: The Contractor's representations of its ability to perform the Work with skilled and competent personnel are a substantial and material condition of this Contract. The Contractor agrees, or is otherwise aware, that the Authority shall rely on all the representations in its response to Request for Proposal attached hereto as Exhibit "A".

10.PERFORMANCE BOND: The Contractor shall obtain a performance bond in the amount not less than 100% of the Contract price of Three Million One Hundred Ninety Six Thousand Nine Hundred Thirty Six Dollars and 00/100 (\$3,196,936.00). Failure by Contractor to present its performance bond at contract execution may be grounds to rescind the contract award. Further and in accordance with Section 22 of Appendix A and B, Contractor's performance bond shall remain in effect throughout the entire period of the work performed, as well as any warranty period, which period shall not be less than

one (1) year from the date of the Authority's final acceptance of the work. Should there be an increase in the contract price, an amended bond shall be provided to equal the new contract consideration; provided however the Authority may in writing, waive this requirement.

11.LIQUIDATED DAMAGES: The Authority may assess liquidated damages solely for Contractor's delay in performing the Work. For each day that performance of the Work extends beyond the specified completion date, for any cause other than excusable causes as defined in Paragraph 13(a) of the Authority's attached General Contract Terms dated April 7, 2019, incorporated by reference herein as Appendix "A" the Contractor and his sureties shall be liable to the Authority and shall be assessed liquidated damages in the amount of Twelve Hundred Dollars and 00/100 (\$1,200.00) a day subject to a maximum of liquidated damages not to exceed Fifteen percent (15%) of the total consideration stated herein.

The Authority reserves the right under this clause to forego its claim for liquidated damages for delays and to sue for actual damages incurred as a result of such delays.

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

The Contractor shall indemnify the Authority for any and all fines that may be assessed against it as a result of the Contractor's failure to adhere to the laws,



regulations and directives of the federal and territorial regulatory agencies; and it shall furthermore pay all costs, expenses, and attorneys fees of the Authority in connection with any action taken by the regulator in this matter.

13.SAFETY PRECAUTIONS: The Contractor shall be responsible for initiating and maintaining safety precautions and programs and supervising its personnel to ensure the safe performance of the Work. The Contractor shall, furthermore, provide all its personnel with sufficient and appropriate safety devices.

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

EPA	Environmental Protection Agency
OSHA	Occupational Safety and Health Administration
NEC	National Electrical Code
NEMA	National Electric Manufactures Association
RCRA	Resource Conversation and Recovery Act
TSCA	Toxic Substance and Control Act
DOT	Department of Transportation
ASTM	American Society of Testing Materials
ASTM	American Society of Testing Materials
AGMA	American Generator Manufacture's Association
NESC	National Electric Safety Code
AWWA	American Water Works Association



NSF	National Sanitation Foundation
FP-96-	Federal Highway Administration

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

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

The Authority designates the following:

Kwame Simmons
Project Management
V.I. Water and Power Authority
St. Thomas, VI 00804
Ofc: (340) 773-2250, ext.3104
Cell: (340) 201-5940
Kwame.simmons@viwapa.vi

The Contractor designates the following:

Shawn Baptiste, President
Marco St. Croix, Inc.
222 & 223 Kingshill Commercial Park
St. Croix, VI 00850
(340) 778-1035

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

16.LIABILITY OF OTHERS: Nothing in this Contract shall be construed to impose any liability against the Authority to persons, firms, associations, or corporations engaged by the Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Authority liable to any such persons, firms,



associations, or corporations for the acts, omissions, liabilities, obligations, and taxes of Contractor of whatsoever nature, including but not limited to employment insurance and social security taxes for Contractor, its servants, agents, employees, or independent Contractors.

17.INSURANCE: The Contractor shall, at his expense, before any Work is commenced, cause to be issued and maintained until sixty (60) days after acceptance of the Work, insurance as described in the Authority's General Contract Terms with Federal Requirements dated April 7, 2019, incorporated by reference herein as Appendix "A". A copy of the insurance certificate must be presented to the Authority's Contracting Officer upon contract execution, failing which the contract award may be rescinded.

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

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

- 1) The Authority's General Contract Terms with Federal Requirements dated April 7, 2019, incorporated by reference herein as Appendix "A"
- 2) The Authority's Request for Proposal, PR-18-22, incorporated by reference herein as Appendix "B";

- 3) The Authority's Request for Proposal, PR-18-22 Addendum I, incorporated by reference herein as Appendix "C";
- 4) The Authority's Request for Proposal, PR-18-22 Addendum II, incorporated by referenced herein as Appendix "D";
- 5) The Authority's Requested for Proposal, PR-18-22 Addendum III, incorporated by referenced herein as Appendix "E";
- 6) Contractor's response to the Authority's Request for Proposal, dated June 6, 2021 incorporated by reference herein as Exhibit "A."

In the event of any conflict among the documents, the provisions of this Contract shall govern, then the provisions of the document first listed above in descending order.

20. NON-DISCRIMINATION: No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of the contracted services on account of race, creed, color, sex, religion, disability or national origin.

21. DEBARMENT CERTIFICATION: By execution of this construction contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this construction contract or any subcontract and that the contractor or subcontractor shall promptly reimburse the Virgin Islands Water & Power Authority for any payment(s) heretofore made.

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

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

24.GOVERNING LAW: The laws of the United States 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 United States Virgin Islands. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

25.WAIVERS AND AMENDMENTS: No waiver, modification, or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the Parties or by their duly authorized representatives and specifying with particularity the nature and extent of such waiver, modification, or amendment. Any such waiver, modification, or amendment in any instance or instances shall in no event be construed to be a general waiver, modification, or amendment of any of the terms, conditions, or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

26.NOTICE: Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid, or

personally delivered, addressed to the Parties as follows:

The Authority: Andrew L. Smith
Executive Director (CEO)
V. I. Water and Power Authority
P. O. Box 1450
St. Thomas, U.S. Virgin Islands 00804

Copy to: Office of the General Counsel
V.I. Water and Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804
legaldepartment@viwapa.vi

The Contractor: Shawn Baptiste, President
Marco St. Croix, Inc.
222 & 223 Kingshill Commercial Park
St. Croix, VI 00850
(340) 778-1035

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

28.SURVIVAL: The following sections of this Contract will survive the termination or expiration of this Contract and will remain in effect until fulfilled:

- Clause 3: Consideration
- Clause 17: Indemnification
- Clause 18: Contract Documents
- Clause 23: Governing Law

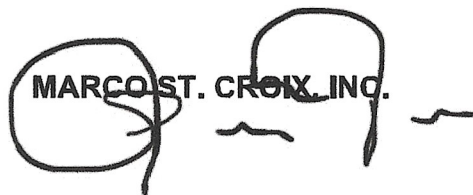
29.ENTIRE AGREEMENT: This Contract and the Contract Documents constitute




the entire agreement of the Parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.

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

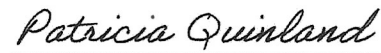

WITNESS


MARCO ST. CROIX, INC.
SHAWN BAPTISTE
President


WITNESS

V.I. WATER AND POWER AUTHORITY

ANDREW L. SMITH
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:


PATRICIA QUINLAND
Assistant General Counsel
Attachments