

VIRGIN ISLANDS WATER AND POWER AUTHORITY
P.O. BOX 1450
ST. THOMAS, VI 00804-1450



**CONTRACT BETWEEN THE V.I. WATER AND POWER AUTHORITY
AND NATIONAL RESPONSE CORPORATION**

Contract No. SC-06-22

The Proceeding Contract is a properly negotiated agreement from 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 referred to as the "Contract") is entered into this 21st day of June, 2022 by and between National Response Corporation (hereinafter called the "Contractor") located at 3500 Sunrise Highway, Building 200, Suite 200, Great River, New York 11739 and the Virgin Islands Water and Power Authority (hereinafter called the "Authority"), located at 9720 Estate Thomas, P.O. Box 1450, St. Thomas, VI 00804, to provide the Authority with Oil Spill Emergency Response Services and Hazardous Waste Operations and Emergency Response (HAZWOPER) Training (TASK 2 ONLY).

WITNESSETH

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

1.SCOPE OF WORK/WORK: The Contractor shall provide HAZWOPER on-site training for the Authority's personnel in the St. Thomas/St. John and St. Croix Districts (referred to as "the Work"). The Contractor shall also provide the Authority with Oil Spill Emergency Response Services, as needed.

A handwritten signature in black ink, appearing to be 'MK', is located in the bottom right corner of the page.

2.CONSIDERATION: In consideration of the Contractor's performance of the Work, the Authority shall pay to Contractor the amount of ONE HUNDRED FIFTY-SIX THOUSAND SIX HUNDRED Dollars and 00/100 (\$156,600). Said consideration shall be for providing services in accordance with the "Work" and includes technical fees, airfare, equipment, PPE, hotel, per diem, and training materials. Payment shall be made in the following manner:

- 2 years Retainer: \$8,500.00 per year
- Task 2 Only: 40 Hour On-Site Hazwoper Training \$34,900.00 per year St. Thomas (2 years)
- Task 2 Only: 40 Hour On-Site Hazwoper Training \$34,900.00 per year St. Croix (2 years)

Acceptance of the services performed is contingent upon approval of the Work by the Authority's Project Coordinator. The consideration stated herein shall be for all the Work performed by the Contractor pursuant to this Contract. Payment of any taxes shall be the sole responsibility of the Contractor. The Authority shall not be responsible in any way for the direct payment of any of Contractor's taxes.

3.PAYMENT TERM: The Contractor will invoice the Authority at the end of each month with respect to work performed under the Contract during that month with payment due within thirty (30) days after approval of each invoice. The invoices shall be verified by the Authority before payment is issued.

4.TERM/PROGRESS REPORTS: This Contract shall commence upon full and final execution by the Parties and issuance of a Notice to Proceed from the Authority. The Contract shall terminate two (2) years from the issuance of the Notice to Proceed.

The Authority and Contractor may extend, in writing, the term of this agreement.

5.SCHEDULE: The Parties shall mutually agree on the scheduling of the training to be provided to the Authority.

6.INSURANCE: The Contractor shall provide insurance as per Clause 14, Exhibit I, Section A of the Authority's Professional General Contract Terms, which has been modified in accordance with the following:

- Clause 1 (Commercial General Liability)- The Contractor shall increase the maximum deductible or retentions to \$250,000.00 per occurrence.
- Clause 2 (Automobile Liability)- The Contractor shall increase the maximum deductible or retentions to \$500,000.00 per accident.
- Clause 3 (Employers Liability)- The Contractor has increased the maximum deductible or retentions to \$350,000.00 per accident or employee (for disease).
- Clause B.1(Environmental Liability Insurance Requirement)- Delete in its entirety.
- Clause C (Property Insurance)- Delete in its entirety.

The Insurance Certificate shall be presented upon contract execution by the Contractor to the Authority. Should the Contractor fail to provide the required insurance the Authority may, at its sole option, rescind the contract award.

7.COVID-19 REQUIREMENTS: The Contractor shall, during the pendency of this Contract develop a plan to ensure the health and safety of its workforce during the COVID-19 Pandemic. The Authority recommends the Contractor utilize the CDC referenced guidance documents in the preparation of its plan. At execution of this

Contract, the Contractor shall present the Authority with a copy of its COVID-19 plan.

The Contractor's employees performing work for the Authority are required to adhere to the Authority's Contractor COVID-19 Protocols, a copy of which is attached hereto and made a part of this agreement as Appendix "E." Each employee of the Contractor performing work for the Authority who has traveled within the past three (3) months or has recently arrived in the Territory must fill out Appendix "E" form, which form must be submitted to the Authority's Human Resources Department.

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

8.DESIGNATED PERSONNEL: The Authority reserves the right to designate personnel to provide information and to coordinate the Work with the Contractor. The Authority designates the following individual in the following capacity:

Maxwell George
Project Coordinator
V.I. Water and Power Authority
P. O. Box 1450
St. Thomas, VI 00804
(340) 690-8993
maxwell.george@viwapa.vi

The Contractor designates the following individual in the following capacity:

Deborah Wick
National Response Corp. (NRC)
3500 sunrise Highway
Bldg. 200, Suite 200
Great River, NY 11739
(516) 658-7358
dwick@nrcc.com


9.CHANGE ORDERS: All change orders or requests for additional services, must be approved in writing by the Contracting Officer. In the absence of such written approval,



the Contractor shall be liable for any changes in the Work not in conformance with this Contract.

10.COMPLIANCE WITH OTHER LAWS: The Parties to this Contract shall comply with all applicable laws, rules, regulations, and public policies that prohibit unethical conduct regarding the obtaining, retention or conduct of business or an unfair advantage ("Laws"). The Parties shall not directly or indirectly give, offer, promise, authorize, or allow to be given, offered, or promised, anything of value to an official or employee of any government, state-owned enterprise, international organization including subdivisions thereof or entities acting on behalf of a government, state-owned enterprise, international organization or subdivision thereof (any such employee or official referred to collectively as "Official"), while knowing or having reason to know that such thing of value is to be given, offered, or promised to an Official (including political parties or officials thereof or candidates for foreign office) in order to: (i) influence any officials thereof, or (ii) induce such Official to use this influence to affect or influence any act or decision of any government (or any subdivision thereof), or (iii) assist the Parties in obtaining or retaining business, or in directing business to any person or obtain an unfair advantage for the Parties in any respect.

Should any Party violate any of the Laws then: (i) the other Party(s) shall have the right to immediately terminate the Agreement for cause; (ii) the other Party(s) shall have a right of action against the offending Party in breach of such laws; and (iii) the offending Party shall indemnify the other Party(s) for any penalty, loss or expenses incurred by the other Party(s) as a result of the offending Party's breach of any of its obligations under this Section.



11. PRESENTATION OF COMPLIANCE WITH LAW: The Parties hereto represent and warrant that this Contract and its performance do not violate any law, regulation, or policy of the United States Virgin Islands. Any Party hereto shall be relieved of its obligations to perform under this Agreement to the extent such performance would violate any law, regulation or policy of the United States.

12. CONTRACT DOCUMENTS (ORDER OF PRECEDENCE): The Contractor shall complete Work to be performed in accordance with the Contract documents. The Contract documents include:

1. The Authority's Professional General Contract Terms dated March 14, 2019, attached hereto and identified as Appendix "A";
2. The Authority's Request for Proposal, PR-11-21 and cover dated March 2, 2021, attached hereto and incorporated by reference herein as Appendix "B";
2. The Authority's Request for Proposal, PR-11-21, Addendum I, attached hereto and incorporated by referenced herein as Appendix "C";
3. The Authority's Request for Proposal, PR-11-21, Clarification I, attached hereto and incorporated by referenced herein as Appendix "D";
4. The Authority's Contractor COVID-19 Protocol, attached hereto and identified as Appendix "E";
5. The Contractor's Proposal attached hereto and identified as Exhibit "A"; and
6. The Contractor's Clarification Response attached hereto and identified as Exhibit "B".

In the event of any conflict, the terms of this Contract will govern over the provisions of any documents referenced herein. This Contract and Contract documents constitute the entire agreement between the Parties hereto, and all prior understandings or

communication, written or oral, with respect to the subject matter of this Contract are merged herein.

13. ENVIRONMENTAL RESPONSIBILITY: The Contractor shall, in the performance of the Scope of Work referenced herein, comply with all applicable rules, regulations, and guidelines including but not limited to those issued by the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the V.I. Department of Planning and Natural Resources (DPNR), and all other federal and territorial regulatory agencies.

The Contractor shall indemnify the Authority for any and all fines that may be assessed against it as a result of the Contractor's failure to adhere to the laws, regulations and directives of the federal and territorial regulatory agencies; and it shall furthermore pay all costs, expenses, and attorney's fees in connection therewith.

14. 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 correspondence as incorporated in the submitted document attached hereto as Exhibit "A".

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. COMPLIANCE WITH OTHER LAWS: The Parties to this agreement shall comply with all applicable laws, rules, regulations, and public policies that prohibit unethical conduct regarding the obtaining, retention or conduct of business or an unfair advantage ("Laws"). The Parties shall not directly or indirectly give, offer, promise, authorize, or allow to be given, offered, or promised, anything of value to an official or employee of any government, state-owned enterprise, international organization including subdivisions thereof or entities acting on behalf of a government, state-owned enterprise, international organization or subdivision thereof (any such employee or official referred to collectively as "Official"), while knowing or having reason to know that such thing of value is to be given, offered, or promised to an Official (including political parties or officials thereof or candidates for foreign office) in order to: (i) influence any officials thereof, or (ii) induce such Official to use this influence to affect or influence any act or decision of any government (or any subdivision thereof), or (iii) assist the Parties in obtaining or retaining business, or in directing business to any person or obtain an unfair advantage for the Parties in any respect.

Should any Party violate any of the Laws then: (i) the other Party(s) shall have the right to immediately terminate the Contract for cause; (ii) the other Party(s) shall have a right of action against the offending Party in breach of such laws; and (iii) the offending



Party shall indemnify the other Party(s) for any penalty, loss or expenses incurred by the other Party(s) as a result of the offending Party's breach of any of its obligations under this Section.

18. PRESENTATION OF COMPLIANCE WITH THE LAW: The Parties hereto represent and warrant that this Contract and its performance do not violate any law, regulation, or policy of the United States Virgin Islands. Any Party hereto shall be relieved of its obligations to perform under this Contract to the extent such performance would violate any law, regulation, or policy of the United States.

19. INDEPENDENT CONTRACTOR: The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

20. ASSIGNMENT:

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Authority.

21. 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, national origin, or disability.

22. CONFLICT OF INTEREST: The Contractor warrants and represents that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its obligations under the Contract. If any such actual or potential conflict of interest arises under this Contract, the Contractor shall immediately inform the Authority in writing of such conflict. If, in the reasonable judgment



of the Authority, such conflict poses a material conflict to and with the performance of Contractor's obligations under this Contract then the Authority may terminate the Contract immediately upon written notice to Contractor; such termination of the Contract shall be effective upon the receipt of such notice by the Contractor.

23.GOVERNING LAW: The laws of the U.S. Virgin Islands shall govern this Contract. 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.

24.PROFESSIONAL GENERAL CONTRACT TERMS: This Contract is subject to the Authority General Professional Contract Terms annexed hereto and made a part of this Contract as Appendix "A". The following provisions of the Authority's Professional General Contract Terms are modified as indicated:

Clause 6 (Progress Reports and Working Schedule) Modified as follows: At the close of any emergency response project, Contractor shall provide a Final Report detailing the cost of the emergency response, detailing actions taken to address the oil spillage, environmental impact, if any; etc.

Clause 9.B(b) (Termination for Convenience)- Modified as follows: As of the effective date 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.

Clause 10 (Delays and Damages)- Modified as follows: 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, pandemics, 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 reasonably procurable in the open market at a fair market price. 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.

Clause 11 (Contract Price) - Modified as follows: The planned Work shall be performed for the Contract price. This Contract price shall be subject to change only in accordance with Clause 12 hereof and shall be inclusive of all duties, fees, and levies,



and all taxes imposed with respect to the performance of the Work. All OSRO services will be provided in a retainer-based fee paid to Contractor on a monthly basis.

Clause 12.1(a) (Terms of Payment) - Deleted in its entirety.

Clause 12.1(c) (Terms of Payment) - Modified as follows: In making such partial payments there shall be retained ten percent (10%) on the invoiced amount until final completion and acceptance of the Work.

Clause 12.2. (Terms of Payment)- Modified as follows: 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. The Contractor shall furnish the Authority with a conditional release, if required, of all claims for payment 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.

Clause 15 (Indemnification for Injury and Damage Claims) – Modified as follows: Nothing in this Agreement will be deemed to interfere with, impair, reduce or otherwise impact any responder immunity available to NRC under federal, state or local law.

Clause 27 (Waste): The following clause shall be inserted into the Authority's Professional General Contract Terms and state the following:

Waste. In the event the work involves handling regulated waste materials, it is understood that Contractor has had no role in generating, treating, storing or disposing of such waste materials which may be present at the project site. No waste materials encountered by or handled by Contractor in performing, or resulting from, the work shall at any time be or become the property of Contractor. Any arrangements made by

Contractor for the treatment, storage, transport, or disposal of any waste materials are made solely and exclusively for the benefit of the generator using the generator's Environmental Protection Agency (EPA) generator identification number(s) when required and shall not result in any liability of Contractor with respect to the waste materials. Contractor shall furnish to the Authority names of facilities currently licensed to accept the waste materials, but it shall be the Authority's or the Authority's client's sole responsibility to select facilities to receive the waste materials. Nothing contained in this Agreement, nor the performance of the Services shall confer on Contractor the status of (a) an owner, operator, generator, or other responsible party of pre-existing waste on site or waste that results from the work, or (b) the party who arranged for the disposal of waste materials, (c) or the party who selected the disposal facility, as provided in any applicable federal or state law.

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 e-mail and certified mail, postage prepaid, or personally delivered, addressed to the Parties as follows:



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

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: Deborah Wick
National Response Corp (NRC)
3500 Sunrise Highway
Bldg. 200, Suite 200
Great River, NY 11739
(516) 658-7358
dwick@nrcc.com

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

Clause 2: Consideration
Clause 12: Contract Documents
Clause 13: Governing Law

28.COUNTERPARTS: This Contract 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.

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 Contract on
the day, month and year first above-written.


WITNESS *Beth A Rathjen*
BETH A RATHJEN
Notary Public, State of New York
No. 01RA4876220
Qualified in Suffolk County
My Commission Expires May 04, 2023.

NATIONAL RESPONSE CORP. (NRC)



MICHAEL REESE Date 5/31/2022
Vice President

V.I. WATER AND POWER AUTHORITY


WITNESS


ANDREW L. SMITH Date 06.21.2022
Interim Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:


AYSHA GREGORY, ESQ. June 2, 2022
Deputy General Counsel Date

Attachments