



VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
ST. THOMAS, U.S. VIRGIN ISLANDS 00804-1450

**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND POWER AUTHORITY
AND HAUGLAND VIRGIN ISLANDS INC**

SC-14-20

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

This Contract is entered into this 5th^{6th} day of March²⁸, 2020, by and between the Virgin Islands Water and Power Authority (hereinafter called the "Authority") at mailing address Post Office Box 1450, St. Thomas, U.S. Virgin Islands 00804 and Haugland Virgin Islands Inc (hereinafter called the "Contractor") at mailing address 18a Estate Havensight, St Thomas, VI 00803, will replace an estimated 3,600 wood poles with composite poles on distribution feeders and complete other related work on the islands of St. Croix. 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 replace up to an estimated 3,600 wood poles with composite poles on distribution feeders and complete other

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related work on the islands of St. Croix. The Scope of Work (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, as modified by exceptions noted in Exhibit "A" This document is incorporated by reference herein as Appendix "A".
2. The Authority's Request for Proposal (PR-13-20) and cover letter, dated November 22, 2019, collectively incorporated by reference herein and identified as Appendix "B", and Negotiated Pricing with Modified Quantities collectively incorporated by reference herein and identified as Appendix "B-1";
3. The Authority's Request for Proposal (PR-13-20), Addendum I dated December 13, 2019, collectively incorporated by reference herein and identified as Appendix "C";
4. "Composite Pole Installation Project" collectively incorporated by reference herein and identified as Appendix D". and
5. The Contractor's response to the Authority's Request for Proposal, (PR-13-20), dated December 19, 2019, collectively incorporated by reference herein and identified as Exhibit "A" and
6. HUD General Provisions ("HUD Rider") incorporated by reference herein as Exhibit "B".

No segment of work shall be commenced until the Contractor shall have obtained approved work packages from the Authority's Project Coordinator.

2. **TERM:** This Contract shall take effect upon its full and final execution by the Parties and issuance of a Notice to Proceed (hereinafter "Effective Date"). The Contract shall terminate twenty-four (24) months from the Effective Date.

3. **CONSIDERATION:** In consideration of the Contractor's performance of the Work, the Authority shall pay to Contractor the amount of ONE HUNDRED FOURTEEN MILLION, NINE HUNDRED SEVENTY-EIGHT THOUSAND, FIVE HUNDRED TWENTY-SIX DOLLARS and 96/100 (\$114,978,526.96). Payments shall

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be made on a progress billing and payment method, after review and approval by the Authority's Project Coordinator.

Payment of any taxes, duties, customs, excise or other fees shall be the sole responsibility of the Contractor. The Authority shall not be responsible in any way for any taxes, customs, duties, excise or other fees. The Authority shall NOT have any obligation to directly pay, or see to the payment of, money to Subcontractors, except as may otherwise be required by law.

4. TERMS OF PAYMENT: Contractor shall submit itemized and duly certified bi-weekly invoices to the Authority. All invoices will show the following: If unit pricing applies, a description of the services performed at the unit pricing. If time and material pricing: detailed labor and equipment hours billing. Labor billing will show employee name, classification, billing code (if applicable), hourly rate, and hours worked. Equipment billing will show equipment description, billing code (if applicable), hourly billing rate, and hours worked. The Authority will not be responsible for charges for idle equipment. All invoices will be broken down by customer work order number, where applicable.

All invoices will be submitted bi-weekly. Payment terms are Net 30 days after the invoice date and the receipt of a Certificate of Acceptance by the Authority, the receipt of said Certificate of Acceptance not be unreasonably withheld or delayed and to be issued no later than 14 days of Contractor's submission of its invoice. No retainage will be withheld, and no liquidated damages will apply during this period.

The Authority shall NOT have any obligation to pay, or see to the payment of, money to Subcontractors, except as may otherwise be required by law.

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5. **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 VIC Section 43(a) for each payment for Work performed in the Virgin Islands. Notwithstanding any other provisions of this contract to the contrary, it is agreed between the Parties that 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 VIC Section 43(a). Despite the requirements under Title 33, Section 44, the Contractor agrees that calculation of gross receipts taxes shall be the sole responsibility of the Contractor. The amount of Gross Receipts to be withheld shall be \$5,748,926.35. 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.

6. **BUSINESS LICENSE:** The Contractor and, if applicable, any of its sub-contractors must comply with all U.S. Virgin Islands licensing laws in connection with its business operations. The Contractor shall obtain all necessary and applicable business licenses and present copies of its licenses and those of its subcontractors to the Authority at contract execution. Failure of the Contractor to present copies of its licenses shall be grounds to consider the Contract as void.

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7. **BOND REQUIREMENTS:** Contractor shall obtain a performance bond and payment bond in the amount of 100% of the Contract Price. A copy of said bonds must be presented to the Contracting Officer of the Authority upon Contract execution. Further, failure by Contractor to present its performance bond and payment bond upon contract execution may, at the sole option of the Authority, be grounds to rescind the contract award. If scope of work under this Contract is changed to require additional work which results in an increase in the Contract's consideration, the performance and payment bond, may, at the Authority's option, be increased to adequately cover the additional work in which cost Contractor shall be entitled to a cost adjustment for the cost of increasing the bond.

8. **LATENT SITE CONDITIONS:** Respective Responsibilities of the Parties at the Site – Latent Site Conditions: Anything to the contrary notwithstanding, should concealed or unknown physical conditions be encountered in the performance of the Work, below the surface of the ground or in an existing structure, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, the Contract sum and Contract time for performance shall be equitably adjusted by Change Order.

Hazardous Materials: Anything to the contrary notwithstanding, Contractor shall have no liability for any hazardous material as described above not introduced to the Work location by it, and the Authority shall indemnify, defend and hold harmless Contractor for any claims or liabilities arising from preexisting or latent hazardous materials, except to the extent Contractor negligently or willfully exacerbates same and fails to take action to mitigate any resultant damage.

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

10. **INDEMNIFICATION:** If the Authority is entitled to indemnification under this Agreement and 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.

11. **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 attorney's fees in connection therewith.

12. **SAFETY PRECAUTIONS:** The Contractor shall be responsible for initiating and maintaining safety precautions and programs and supervising its

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personnel to ensure the safe performance of the Work. The Contractor shall, furthermore, provide all its personnel with sufficient and appropriate safety devices.

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

1. EPA- Environmental Protection Agency
2. OSHA - Occupational Safety and Health Administration
3. NEC- National Electric Code
4. NEMA-National Electric Manufacturer's Association
5. RCRA- Resource Conservation and Recovery Act
6. TSCA- Toxic Substance and Control Act
7. DOT- Department of Transportation
8. ASTM- American Society of Testing Materials
9. AGMA- American Generator Manufacturer's Association
10. NESC -National Electric Safety Code
11. AWWA- American Water Works Association
12. NSF- National Sanitation Foundation
13. NACE- National Association of Corrosion Engineers
14. SSPC - Steel Structure Painting Council

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



13. 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:

Chavante Marsh
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804-1450
(340) 626-1397
chavante.marsh@viwapa.vi

The Contractor designates the following individual in the following capacity:

John Reynolds
Haugland Virgin Islands Inc
336 South Service Road
Melville, NY 11747
(516) 336-6720
jreynolds@hauglandllc.com

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

15. 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.

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16. INSURANCE: The Contractor shall, at its expense, before any Work is commenced, cause to be issued and maintained until sixty (60) days after acceptance of the Work, insurance as described in the Authority's General Contract Terms revised April 7, 2019. A copy of the insurance certificate must be presented to the Authority's Contracting officer at contract execution.

17. 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, as modified by exceptions noted in Exhibit "A". This document is incorporated by reference herein as Appendix "A",
2. The Authority's Request for Proposal (PR-13-20) and cover letter, dated November 22, 2019, collectively incorporated by reference herein and identified as Appendix "B" and Negotiated Pricing with Modified Quantities, collectively incorporated by reference herein and identified as Appendix "B-1";
3. The Authority's Request for Proposal (PR-13-20), Addendum I dated December 13, 2019, collectively incorporated by reference herein and identified as Appendix "C";
4. "Composite Pole Installation Project", collectively incorporated by reference herein and identified as Appendix "D";
5. The Contractor's response to the Authority's Request for Proposal, (PR-13-20), dated December 19, 2019, collectively incorporated by reference herein and identified as Exhibit "A" and
6. HUD General Provisions ("HUD Rider"), incorporated by reference herein as Exhibit "B".

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In the event of any conflict, the terms of this Contract and the Authority's RFP and its Addendums shall govern over the provisions of any other document.

18. GENERAL CONTRACT TERMS: This Contract is subject to the Authority's General Contract Terms attached hereto and made a part hereof as Appendix "A" and which is revised by mutual agreement of the parties as follows:

a. **Clause 15- Equipment and Construction Warranty-**

- Delete in its entirety and insert the following:
 - a. The Contractor warrants, except as otherwise provided in this Clause, that all construction and workmanship included in the Work, shall be of the kind and quality called for in Specifications and shall be free from defect 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, 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 performance of the work. Provided that the notice of such defect and proof thereof is promptly sent to the Contractor. 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 if 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

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the project or otherwise paid by the Contractor.

b. Clause 17-Compliance with Applicable Laws-

- Delete the words "any design or" from subsection b.
- Delete the words "of the equipment " and the word "engineering" from subsection c.

c. Clause 19 – Patent Infringement-

- Add a section c to read as follows:

The Indemnification obligations of the Contractor under Clause 19 shall not apply to materials and equipment furnished by the Authority.

d. Clause 23- Indemnification for Injury/Damages

At subsection a, delete in line 2 -the words " ... or acts of negligence of the Authority , its employees or agents".

Add a new line at the end of the sentence as follows:

The indemnification obligations herein shall only apply to the negligent action of the Contractor and its agents.

- e. Clause 24 – The Parties recognize that the funds for the payment of the services performed for the Scope of Work are being provided by the Federal Emergency Management (Agency) under federal grant as payment to the Authority. To the extent unpaid to Contractor, the Authority hereby assigns and conveys rights, title and interest in reimbursement from FEMA for services provided by Contractor pursuant to this agreement. The Parties acknowledge, however that the Authority's payment obligations are not limited to or conditioned upon the payment by FEMA.

19. HUD RIDER: This Contract is subject to the HUD Rider attached hereto and made a part hereof as Exhibit "B" and which is revised by mutual agreement of the Parties as follows:

Clause 30 subsection B- remove word no from "are under no contractual"

Clause 30 Subsection E -insert "not subject to IBEW collective bargaining agreement" after "vacant employment positions"

20. 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: Lawrence J. Kupfer
Executive Director (CEO)
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804

And

Office of the General Counsel
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804
LegalDepartment@viwapa.vi

The Contractor: John Reynolds
Becky Tung
Haugland Virgin Islands Inc
336 South Service Road
Melville, NY 11747
(516) 336-6720
jreynolds@hauglandllc.com
btung@hauglandllc.com

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21. 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.

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

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


WITNESS


HAUGLAND VIRGIN ISLANDS INC

By:

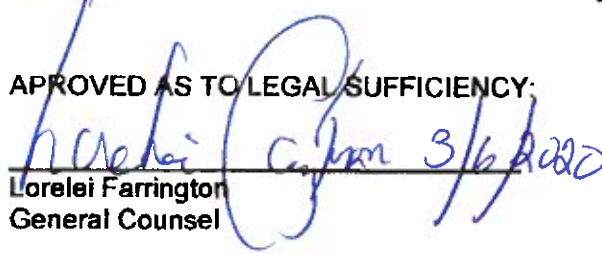

William Haugland
Chief Executive Officer/Chairman

V.I. WATER & POWER AUTHORITY

By:


Lawrence J. Kupfer
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:


Lorelei Farrington
General Counsel

Attachments