

VIRGIN ISLANDS WATER and POWER AUTHORITY  
POST OFFICE BOX 1450  
ST. THOMAS, USVI 00804



**SC-11-23**

**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND POWER AUTHORITY  
and THE WESTIN BEACH RESORT & SPA AT FRENCHMAN'S REEF and THE  
AUTOGRAPH COLLECTION RESORT AT FRENCHMAN'S REEF (collectively, THE  
FRENCHMAN'S REEF RESORT)**

**THIS CONTRACT** is entered into this day of 1<sup>st</sup> November 2022, by and between The Westin Beach Resort & Spa at Frenchman's Reef and The Autograph Collection Resort at Frenchman's Reef, collectively, the Frenchman's Reef Resort (hereinafter called "Customer"), located at the 5 Estate Bakkeroe, St. Thomas, VI 00802 (mailing address: PO Box 7100, St. Thomas, VI 00801) and the Virgin Islands Water and Power Authority (hereinafter called the "Authority" or "VIWAPA"), located at 9720 Estate Thomas, St. Thomas, VI 00802 (mailing address: P.O. Box 1450, St. Thomas, VI 00804). The Customer and the Authority shall collectively be referred to as the "Parties."

The following definitions shall be applicable to this Contract:

1. **Potable Water:** Water that is considered suitable to drink by meeting the standards as defined in the Virgin Islands Safe Water Drinking Act, Title 19, Chapter 51, of the Virgin Islands Code.
2. **Minimum Usage:** Under the Experimental Large User Incentive Rate Schedule LUW, (as defined by the PSC Order No. 22/2014), minimum usage is based on the Contract Demand Classification Volume Range.
3. Under the Experimental Large User Incentive Rate Schedule LUW, Contract Demand is subject to the Demand Classification for User Size.

<u>User Size</u>	<u>Contract Demand Range per KGallons</u>
• Small User	5 – 20 K Gallons Per Day (GPD)
• Medium User	21-50 K Gallons Per Day (GPD)
• Medium Large User	51 – 70 K Gallons Per Day (GPD)
• Large User	>70 K Gallons Per Day (GPD)

4. **Billing Demand** (or demand charge) – means the Contract demand GPD.
5. **LEAC-Levelized Energy Cost Adjustment Clause:** An estimated amount to cover the cost of water purchased and related costs for water production (including electricity costs). Such amount is determined as the difference between energy costs billed, using estimated energy costs and actual energy cost incurred.
6. **Demand Charge:** means the contract Demand multiplied by (1) the number of days in the billing period and (2) an applicable rate of \$12.67 per kgal for the customer's selected Small User Demand Classification as found in the Rate Schedules below:

Demand Classification	Demand Charge	
	Contract Demand	Rate per kgal
Small User	5 – 20 kgal per day	\$12.67
Medium	21 – 50 kgal per day	\$ 9.50
Medium Large User	51 – 70 kgal per day	\$7.92
Large User	> 70 kgal per day	\$ 6.86

7. **Excess Volume:** Customer's actual meter usage in kgals for the billing month less the Customer's Billing Demand multiplied by the number of days in the billing period.
8. **Excess Volume Charge:** Computed Excess Volume for the month multiplied by 90% of the specified demand charge for the Customer's Demand Classification.
9. **Monthly Reduction of Demand Charge:** The Demand Charge shall be reduced by excluding those days that the Authority's Facilities were not available for the supply of water to the Customer. Contract Demand is subject to negotiation in the event of a catastrophic occurrence that causes the customer facilities to be closed (e.g. a major hurricane).
10. **Line Loss Surcharge:** A line loss surcharge of \$0.00071 per gallons shall be applied to all monthly gallons of water metered pursuant to the PSC Order in Docket No. 613 effective January 1, 2014.

**WHEREAS**, the Authority has sufficient water production capacity to allow for the sale of large quantities of Potable Water; and

**WHEREAS**, the Large Water Users are encouraged to remain customers of the Authority's water distribution system; and

**WHEREAS**, the Public Services Commission (hereinafter "PSC") approved Order No. 46/2009, which provides for an experimental larger user incentive water rate; and

**WHEREAS**, the term of this Contract between the Parties is for one (1) year; and

**WHEREAS**, this Contract and the service provided is subject to the Authority's Rules and Regulations for potable water service.

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

1. The Preamble constitutes an integral part thereof;
2. The Contract Demand amount is a "take or pay". The Customer agrees to a Contract Demand of at least 5,001 gallons of water per day at a rate of \$12.67 per kgal. Customer, however, understands that the Billing Demand that is charged is the higher of either (a) the Contract Demand gpd or (b) ½ of the highest daily average with prior six-month billing period.
3. The Customer agrees to pay the Authority an amount equal to the following: (a) Customer's Billing Demand charge based on a minimum average consumption of 5,001 gallons of water per day at a rate of \$12.67; (b) plus 90% of specified Demand Charge of the Customer's Demand classification (\$11.40) for excess volume as defined above; (c) plus applicable LEAC charge, as defined above; and (d) plus line loss surcharge, as defined above.
4. If the Customer's account remains unpaid after expiration of the billing period, it shall be classified as delinquent, and if it still remains unpaid twenty (20) days after expiration of the payment period, the Customer's service may be discontinued at any time upon ten (10) days prior written notice. If service is thus discontinued, it shall not be restored until all unpaid bills and all charges, including the reconnection charges, are paid, or satisfactory arrangements made for payment.
5. This Contract term shall be for one (1) year from the date of execution. It is renewable if both Parties agree in writing to do so, and such agreement by the Authority shall not be unreasonable withheld.
6. Notices: All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, or if sent by U.S. certified mail, return receipt requested, postage prepaid, shall be deemed duly given on the first attempted delivery by U.S. Postal Service or if sent by facsimile or receipted overnight courier services shall be deemed duly given on the business

day received if received prior to 5:00 pm (AST) or on the following business day if received after 5:00 pm (AST) or on a non-business day, addressed to the respective parties hereto as follows:

**If to:** VIRGIN ISLANDS WATER & POWER AUTHORITY

Daphne Mayers  
Collections and Key Accounts Manager  
9720 Estate Thomas  
P O Box 1450  
St. Thomas, VI 00804  
[daphne.mayers@viwapa.vi](mailto:daphne.mayers@viwapa.vi)

**Copy to:** [legaldepartment@viwapa.vi](mailto:legaldepartment@viwapa.vi)

**If to:** CUSTOMER

The Westin Beach Resort & Spa at Frenchman's Reef  
Attn: Kurt Wiksten, Resort Managing Director  
PO Box 7100  
St. Thomas, VI 00801  
[Kurt.Wiksten@aimhosp.com](mailto:Kurt.Wiksten@aimhosp.com)

**Copy to:** Bhavin Vivek  
CREF3 USVI Hotel Owner, Inc.  
c/o Fortress Investment Group  
4550 Travis Street, Floor 7  
Dallas, TX 75205  
[bvivek@fortress.com](mailto:bvivek@fortress.com)

**Copy to:** Peter Brogan  
CREF3 USVI Hotel Owner, Inc.  
c/o Fortress Investment Group  
4550 Travis Street, Floor 7  
Dallas, TX 75205  
[pbrogan@fortress.com](mailto:pbrogan@fortress.com)

or to such other address as to any party hereto as such party shall designate by like notice to the other party hereto will promptly furnish to the other party a copy of any notice it may receive from any third person which may affect the rights of any party hereunder. Either party's authorized agent may send notices as the direction of and in place of said party.

7. The Authority endeavors to furnish uninterrupted Potable Water, but it cannot guarantee either an uninterrupted flow of water or an invariable, constant flow. The Authority therefore disclaims any liability for consequential damages to its Customer or others for injuries, losses, or damages owing to fire, loss of water capacity, an interruption, pressure changes in or cessation of the flow of water. The Customer is urged to secure whatever protective equipment the Customer deems advisable to protect water pipes, pumps, plumbing fixtures or other facilities which may be damaged by interruptions, pressure changes in or cessation of the flow of water.
8. The terms of this Agreement shall be subject to any changes or modifications made by the PSC in a subsequent Order, if any, regarding the Experimental Large User Incentive Rate LUW.

*Signature Page to Follow*

**THEREFORE**, the Parties, by their signatures, hereto consent to be bound by the terms of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto duly execute this Contract on the day first written above.

THE WESTIN BEACH RESORT & SPA  
AT FRENCHMAN'S REEF and THE  
AUTOGRAPH COLLECTION RESORT  
AT FRENCHMAN'S REEF (collectively  
THE FRENCHMAN'S REEF RESORT)

Jan Decker 12/6/2022  
Witness Dated

BY:

[Signature]  
Name: KURT LUK STEW Dated 12/6/2022  
Title: MANAGER DIRECTOR

**ACKNOWLEDGEMENT**

USVI  
STT/STJ

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SS:


On this 10<sup>th</sup> day of November 2022, before me, the undersigned officer, personally appeared Chad Schafer, known to me (or satisfactorily proven) to be the individual whose name is subscribed to the foregoing instrument; and she/he acknowledged to me that she/he executed the same freely and voluntarily for the uses and purposes therein contained.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

[Signature]  
NOTARY PUBLIC

Velma C. Poleon  
NOTARY PUBLIC  
Frenchman's Reef & Morning Star Hotel  
NP-256-19  
My Commission Expires: August 21, 2023  
STT/STJ USVI District

VI WATER & POWER AUTHORITY

 12-08-2022  
WITNESS Dated

 12.8.2022  
Andrew L. Smith Dated  
Executive Director/CEO

**ACKNOWLEDGEMENT**


TERRITORY OF THE VIRGIN ISLANDS )  
DIVISION OF ST. CROIX ) SS:

On this 8th day of December 2022, before me, the undersigned officer, personally appeared Andrew L. Smith, known to me (or satisfactorily proven) to be the individual whose name is subscribed to the foregoing instrument; and he acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
NOTARY PUBLIC

APPROVED AS TO LEGAL SUFFICIENCY:

  
Dionne G. Sinclair  
General Counsel

**Nicole M. Aubain**  
NOTARY PUBLIC  
St Thomas, U S Virgin Islands  
GNP-16-21  
My Commission Expires  
At the Pleasure of the Lt. Governor

