

No. 2 DISTILLATE FUEL OIL  
PURCHASE CONTRACT  
ST. CROIX AND ST. THOMAS  
GENERATING

SC-13-22

AS FIRST PARTY: The Virgin Islands Water and Power Authority (hereinafter referred to as "VIWAPA" or the "Buyer"), a public corporation and government instrumentality of the Government of the United States Virgin Islands, represented in this act by its Interim Executive Director, Noel Hodge; and AS SECOND PARTY: **Borinken Towing and Salvage LLC**, hereinafter referred to as "Seller" a company incorporated under the laws of the United States Virgin Islands, represented in this act by its Head of US Operations, President Ruben Iglesias (Each of VIWAPA and Seller may also be referred to herein as a "Party" and, collectively, as the "Parties.")

WITNESSETH

WHEREAS, VIWAPA issued a Request for Quotation for the supply of No. 2 distillate fuel oil, as further described in Article I.A (the "Product"), for use at VIWAPA's St. Croix and St. Thomas Generating Stations.

WHEREAS, in response to the referred Request for Quotation, Seller made an offer to supply the Product delivered to Buyer's Krum Bay St. Thomas Terminal, located at St. Thomas, U.S.V.I., and to Buyer's Estate Richmond St. Croix Terminal, located at St. Croix, U.S.V.I. (the "Terminals").

NOW THEREFORE, in consideration of the mutual covenants herein stated, the Parties agree themselves their personal representatives, successors, and assigns, as follows:



## **ARTICLE I. Scope and Term of Contract**

- A. Seller agrees to sell and deliver to VIWAPA, and VIWAPA agrees to purchase from Seller, for a period of twelve (12) months beginning January 1, 2022, VIWAPA's requirements for the Product in compliance with the specifications in Exhibit A, for use at the St. Croix and St. Thomas generating stations. During the term of the Contract, VIWAPA shall deal exclusively with Seller to obtain all of VIWAPA's requirements for the Product, and Seller agrees to supply all the requirements for the Product, as may occur and as requested by VIWAPA, to meet VIWAPA's needs. VIWAPA shall pay for only the Product that is supplied by Seller at VIWAPA's request (plus or minus a commercially reasonable operational tolerance) and as to which title has passed to VIWAPA.
- B. This Contract shall terminate on December 31, 2022, unless extended on a six (6) month basis by mutual written agreement, including a mutually agreed upon average minimum purchase obligation, no later than thirty (30) days prior to the expiration of the term of the Contract, but not to extend beyond June 30, 2023.

## **ARTICLE II. TERMINATION**

Type text here

### **A. Termination by Seller**

- (i) In the event Buyer fails to comply with any of its material obligations under the Contracts than obligations under this Contract for which the parties have negotiated a separate, specific remedy), Seller may declare its intent to terminate the Contract upon sixty (60) days' notice to Buyer, during which 60-

NA

day period Buyer shall have the right to cure or to negotiate and agree with Seller on a mutually satisfactory resolution. If a cure or mutually agreeable resolution is achieved within such 60-day period, the Contract shall remain in full force and effect, in accordance with its terms or as it may be modified by any mutually agreeable resolution. In the absence of a cure or a mutually satisfactory resolution within such 60-day period, Seller shall have the right to terminate the Contract at the end of such 60-day notice period.

- (ii) The exercise of its right to terminate the Contract under this paragraph shall not constitute a waiver by Seller of any other remedy it may have under the Contract or under law.

**B. Termination by Buyer**

(i) In the event Seller fails to comply with any of its material obligations under the Contract (other than obligations under this Contract for which the parties have negotiated a separate, specific remedy), Buyer may declare its intent to terminate the Contract upon thirty (30) days' notice to Seller, during which following thirty (30) day period Seller shall have the right to cure or to negotiate and agree with Buyer on a mutually satisfactory resolution. If a cure or mutually agreeable resolution is achieved within such thirty (30)-day period, the Contract shall remain in full force and effect, in accordance with its terms or as it may be modified by any mutually agreeable resolution. In the absence of a cure or a mutually satisfactory resolution within such thirty (30)-day period, Buyer shall have the right to terminate the Contract at the end of such thirty (30)-day notice period.

- (ii) The exercise of its right to terminate the Contract under this paragraph shall not



constitute a waiver by VIWAPA of any other remedy it may have under the Contract or under law.

### **ARTICLE III. Independent Contractor**

- A. Seller shall be considered an independent contractor for all material purposes under this Contract. All persons engaged or contracted by Seller or its subcontractors or agents for the performance of its obligations herein shall be considered as Seller's agents or subcontractors, and not VIWAPA's employees or agents.

### **ARTICLE IV. Delivery, Nomination and Title**

- A. Delivery of the Product, as requested by VIWAPA and meeting the specifications set forth in Exhibit A, shall be at Krum Bay Terminal St. Thomas (the "Krum Bay Terminal") and at VIWAPA Estate Richmond Terminal St. Croix (the "Richmond Terminal"). The Price Formula for each delivery shall be established based on the Platts US Marketscan Report on the day of loading the shipment, or the last Platts US Marketscan Report before loading. Any unforeseen port charges due to new administrative rules or legislation, may be borne by VIWAPA.

- B. VIWAPA shall submit an estimate of its lifting requirements for the months of January and February 2022, together with indicative three (3)-day delivery windows and volumes for each delivery for the month of January 2022. Thereafter, and for the remainder of the term of this Contract, VIWAPA shall submit, no later



Type text here

than the fifteenth day of each calendar month beginning in January 2022, an estimate of its lifting requirements, for the following two calendar months, and an indicative three (3)-day delivery window and volume for each delivery for the first such calendar month. Thereafter, Buyer shall propose a firm delivery window and volume no less than seven (7) days prior to the first day of each window. Seller shall promptly acknowledge receipt of each such proposed delivery window and volume. Within five (5) days following such receipt, Seller shall confirm Buyer's proposed delivery windows and volumes or propose alternative delivery windows and/or volumes for such thirty (30) day period, and the Parties shall agree on a delivery schedule, which shall be final, unless VIWAPA, during such 30-day period, determines that it requires more Product than originally estimated and proposes one or more additional delivery windows and/or volumes, no less than seven (7) days prior to the first day of each such window. Within five (5) days following such proposal, Seller shall either confirm such windows and/or volumes or propose one or more alternative windows and/or volumes acceptable to VIWAPA, which shall constitute, together with the previously agreed-upon delivery schedule, a revised final agreed-upon delivery schedule for such 30-day period.

- C. This Contract is a requirements contract in which Seller agrees, subject to the terms of this Contract, to sell to VIWAPA all of the Product that VIWAPA may request, and VIWAPA shall buy such Product exclusively from Seller. VIWAPA has minimum purchase obligations of an average volume of 25,000 barrels (+/- 10%) per month and minimum 15,000 barrels (+/- 10%) per trip, which will be calculated as a cumulative minimum obligation over the Term of the Contract



and Buyer will have a mutually agreed upon average minimum purchase obligation for each month that the Contract may be extended beyond its original term.

- D. Seller shall deliver Product at one safe berth at each of the Terminals from Seller's vessel scheduled to arrive within the delivery windows agreed by the Parties. Title to the delivered Product and risk of loss and contamination shall pass to VIWAPA as the fuel passes the permanent flange at the Krum Bay Terminal or the Richmond Terminal, respectively. Seller is responsible for providing the necessary hoses, and for cleaning, removing, and disposing of any spill of the Product that occurs before it passes the permanent flange at the Krum Bay and Richmond Terminals, respectively, and shall be responsible for securing all materials, permits and personnel (other than WAPA personnel) required for handling the transfer of the Product. With respect to the hoses used in the discharge process, Seller shall be responsible for the following: should such vessel-owned discharge hoses be stored shoreside, retrieval from the respective docks in the event vessel chooses to store such hoses shoreside at the Krum Bay Terminal and the Richmond Terminal; connection to, and disconnection from, the discharging vessel; and return of the hoses to the respective docks. VIWAPA shall otherwise provide the personnel to conduct the shore operations necessary to discharge the Product delivered by Seller under this Contract, including but not limited to personnel required for connecting the hose to the permanent flange of the Krum Bay Terminal and the



Richmond Terminal respectively.

- E. 1. The Krum Bay Terminal and the Richmond Terminal each have a single berth. Seller shall conduct its own investigation relative to navigational information at the Krum Bay Terminal and at the Richmond Terminal. However, it remains the responsibility of VIWAPA to provide and maintain a safe berth at each facility.
2. Deliveries via vessel to the Krum Bay Terminal are limited to a channel with a safe arrival draft of 30 feet. Subject to the additional limitations as a result of the current necessity to use the Mooring Plan, a copy of which Seller has in its possession and has reviewed, instead of the dock at the Krum Bay Terminal, deliveries to be made using VIWAPA's dock at this terminal subsequently will be limited as follows:

|                    |                 |            |
|--------------------|-----------------|------------|
| LOA                | 450             | Feet       |
| Beam               | No Restrictions | Feet       |
| Draft              | 30              | Feet       |
| Total Displacement | 22,000          | Short Tons |



3. Deliveries via vessel to the Richmond Terminal are limited to a channel with a safe arrival draft of 15 feet. Deliveries to be made using VIWAPA's dock at this terminal at present are limited as follows:

|       |                 |      |
|-------|-----------------|------|
| LOA   | 305             | Feet |
| Beam  | No Restrictions | Feet |
| Draft | 15              | Feet |



|                    |      |            |
|--------------------|------|------------|
| Total Displacement | 9000 | Short Tons |
|--------------------|------|------------|

Seller will comply with all U.S. Coast Guard regulations, and all other applicable regulations, at the Krum Bay Terminal and at the Richmond Terminal.

F. Maximum temperature of oil entering either the Krum Bay Terminal or the Richmond Terminal shall not exceed one hundred ten degrees Fahrenheit (110°) and at the pressure of not more than one hundred pounds per square inch gauge (100 psig.), measured at the respective terminal permanent intake flange.

G. Notwithstanding VIWAPA's obligation to purchase the Product exclusively from Seller, if (i) Seller, for any reason, fails to deliver the fuel required as provided for in this Contract, or (ii) the Parties fail, within the time frames specified in Article IV.B, to agree on a delivery window for any particular delivery, notwithstanding their good faith and commercially reasonable efforts to do so, **VIWAPA** may, upon notification to Seller and acting in a commercially reasonable manner, purchase from any other supplier such quantity of the Product that Seller failed to deliver or with respect to which quantity the Parties failed to reach agreement on a delivery window. Any such action by VIWAPA shall not in any way limit VIWAPA's rights under Article 11.B, and shall not constitute a waiver of any rights available to VIWAPA under this Contract or under law, including rights to any claims or actions





for damages resulting from such non-compliance by Seller with the terms of this Contract. In such event, other than a Force Majeure event, VIWAPA may credit against any sums otherwise owed to Seller any amount that VIWAPA has paid other suppliers for such purchases in excess of the Contract prices ("Cover Damages"), subject to provision of documentary evidence, calculation of claim, and mutual agreement, which shall not be unreasonably withheld, delayed or conditioned; provided, however, that failure to agree to the amount of the credit against sums otherwise owed to Seller shall not deprive VIWAPA of its right to rely on other remedies to recover such Cover Damages.

- H. In the event Seller reasonably anticipates, or VIWAPA reasonably anticipates and so notifies Seller, that a force majeure event may occur with respect to any scheduled delivery, Seller and VIWAPA shall immediately take all reasonable actions and employ emergency plans to attempt to minimize any disruptions of VIWAPA's operations due to fuel shortages, and to protect public and private properties in connection with their obligations under this Contract.
- I. Without limiting the generality of any provision in Art. VIII, the Parties agree to indemnify each other for all direct expenses and costs, including liability to third parties and reasonable attorneys' fees, arising out of any claim due to an environmental violation solely caused by one Party, or its agents, employees, subcontractors or assigns during the performance or non-performance of such Party's obligations under the Contract. If any such claim due to an environmental violation is caused by both Parties or their respective agents, employees,



subcontractors or assigns during the performance or non-performance of Seller's obligations under the Contract, all direct expenses and costs, including liability to third parties and reasonable attorneys' fees, shall be shared, and the Parties agree to mutually indemnify each other with respect thereto, in proportion to the extent of the Parties' or their agents', employees', subcontractors', or assigns' respective liability.

- J. Every vessel delivering the Product to either the Krum Bay Terminal or the Richmond Terminal shall comply with the terminal requirements set forth in this Article IV. E.2 and E.3, in addition to all other applicable health, safety and environmental laws and regulations, and Seller shall bear the risk of any failure to comply with such requirements.
- K. It is Seller's responsibility to familiarize itself with all the locations referenced in the Contract. Seller will be required to have the proper personnel and equipment to satisfy its obligations under this Contract.

#### **ARTICLE V. Specifications and Determination of Quality**

- A. The Product supplied shall be in accordance with the specifications in Exhibit A, which includes fuel with homogeneous hydrocarbons, free of inorganic acids and microorganisms and free of water, solid, or foreign matter with a maximum sulfur content of 0.15% wt. To the extent there is an inconsistency between the loads Port Shore Tank Certificate of Quality and/or Vessel Composite Load Port Certificate of Quality and the Vessel Composite



Discharge Port Certificate of Quality (as defined below), the parties agree that the Vessel Composite Discharge Port Certificate of Quality shall be the final and binding (save for fraud or manifest error) determination of quality.

B. Gravity and sulfur analysis of upper, middle, and lower samples shall be the appropriate means of establishing homogeneity of the vessel composite sample. It is Seller's responsibility to provide VIWAPA with a quality certificate that ensures among other things that the fuel intended for delivery complies with the contracted specifications and that the same is homogeneous. A tank shall be considered to be homogeneous where the maximum difference in tested gravities between anytwo (2) samples from different strata is not greater than 1degree API and the maximum difference in tested sulfur content between any two (2) samples from different strata is not greater than 0.04 weight percent. All tested samples are required to meet the contracted specifications.

C. Prior to delivery, Seller shall provide VIWAPA's plant superintendent or its agent with a "Load Port Shore Tank Certificate of Quality" representing a composite analysis of the loading shore tank(s) determined by an independent inspector. This certificate shall serve only as Seller's initial assurance that the Product to be delivered to VIWAPA meets the contractual specifications. Further, prior to the subsequent delivery of Product, Seller shall provide VIWAPA's plant superintendent or its agent with a "Vessel Composite Load Port Certificate of Quality" representing a composite analysis of the delivering vessel after load determined by an independent inspector.

D. The parties agree that analysis of the vessel composite at discharge shall not



berequired albeit either party may, at its sole discretion, request an analysis by a mutually agreed independent inspector who shall circulate a "Vessel Composite Discharge Port Certificate of Quality". The parties further agree that the independent inspector retained by the parties for the purposes of determining quantity shall be instructed to take and retain samples for a period of 90 calendardays from the vessel should either party wish to carry out such analysis following discharge. The costs for the independent inspector at discharge shall be split equally between the Parties and the results of the independent analysis are to be final and binding save for fraud or manifest error.

- E. If the Product fails to meet any of the specifications in Exhibit A (a "Non-conformity") as shown by the Load Port Shore Tank Certificate of Quality, VIWAPA may reject the Load Port Shore Tank Certificate of Quality and demand that Seller, prior to tender, rectify any such Non-Conformity or otherwise find alternative supply, which Seller agrees to do within five (5) days following any such demand, failing which Seller shall be deemed to be in breach of this Contract. If the Product is accepted, notwithstanding Seller's disclosure of the Non-Conformity in the Load Port Shore Tank Certificate of Quality (provided, however, that VIWAPA shall not be deemed to have waived any rights with respect to any Non-Conformity other than the Non-Conformity as disclosed by Seller), or, the Product is accepted as the Load Port Shore Tank Certificate of Quality discloses no Non-Conformity, but a Non-Conformity is subsequently disclosed by the Vessel Composite Load Port Certificate of Quality and/or Vessel Composite Discharge Port Certificate of Quality (the latter being determinative), VIWAPA



may take one or more of the following remedies, without in any way limiting its rights to recover damages in the event of a breach: (i) evaluate the failure to the extent it relates to a lower heat content than the guaranteed Btu value set forth in Exhibit A and deduct a monetary equivalent from the amount due to Seller based on the criteria established in Exhibit B, (ii) come to a mutually satisfactory agreement with the Seller to deduct an appropriate amount from the amounts due to Seller to compensate VIWAPA for the diminution in value of the Product based on the extent of the Non-Conformity other than BTU content, or (iii) come to some other mutually satisfactory commercial resolution with the Seller to bring the Product into conformity with the required specifications, including, but without limitation, effectuating a Cure Delivery as defined in Article V. F. below; and/or (iv) exercise its termination rights in accordance with the terms set forth in Art. II.

F. Pursuant to Art. V.E.(iii), a "Cure Delivery" is where Seller shall deliver Product in sufficient quantities and meeting such quality specifications that, when blended with the off-spec Product, the resulting blend will meet or exceed all of the specifications in Exhibit A. Seller, in consultation with VIWAPA, shall develop a plan for a Cure Delivery within 48 hours of VIWAPA's request, and the Cure Delivery shall be completed within five (5) days following the plan's development. The price charged for any such additional fuel deliveries shall be the per barrel price for Product delivered under this Contract.

**ARTICLE VI. Type of Fuel to be Supplied**

A. VIWAPA requires a fit and merchantable fuel appropriate for burning without

NH

requiring extraordinary maintenance to the generating stations and their associated equipment or causing extraordinary problems in the plant operations and which yields the lowest cost per kW hour produced. Product meeting the specifications set forth on Exhibit A or accepted by VIWAPA notwithstanding disclosure by Seller that the Product fails in one or more respects to meet the specifications set forth on Exhibit A, shall be deemed fit and merchantable fuel pursuant to the terms of this provision. In the event that during the term of this Contract, Federal or United States Virgin Islands laws, regulations or permits are modified and allow or require the burning of a fuel to different specifications compared to the fuel contracted for, and if these changes require an adjustment in the price of the fuel regarding the benchmark price indices, premiums or discounts contracted for, then the Parties shall discuss as soon as possible prior to the effective date of any such modification for the purpose of establishing new price terms satisfactory to both Parties. If an agreement cannot be reached within thirty (30) days prior to the effective date of the modification, then either Party shall have the right to terminate the Contract upon written notice to the other Party.

- B. In the event that, during the term of this Contract, any of the contracted price postings cease to exist, Seller and VIWAPA shall meet to establish an alternative means to determine the contracted price satisfactory to both Parties. If the Parties are unable to agree on an alternative means to determine the contracted price within thirty (30) days after any of the contracted price postings ceases to exist, then the Contract shall automatically terminate.



**ARTICLE VII. Laytime and Demurrage**

- A. Except as provided in Article VII., VIWAPA assumes no responsibility or liability for demurrage incurred by the vessel(s) delivering the Product pursuant to this Contract, unless such demurrage is attributable to the fault or negligence of VIWAPA. Laytime shall commence when the vessel is all fast at berth and cleared by Customs. If the vessel arrives within its scheduled delivery window and berthing is delayed solely as a result of VIWAPA's lack of readiness to receive the Product from the vessel, laytime shall commence six (6) hours after the vessel tenders NOR, or when the vessel is all fast, whichever occurs first. If discharge is delayed or interrupted solely as a result of weather conditions of any nature, any such delay shall count as one-half laytime or one-half time on demurrage at the daily time charter rate. Further, VIWAPA shall not be responsible for demurrage or any delay in discharging caused by a third Party.
- B. In good faith, Buyer and Seller agree to maintain open and constant communication regarding the anticipated arrival of all vessels, and Seller will provide arrival estimates at a minimum of approximately seventy-two (72), forty-eight (48), and twenty-four (24) hours before each vessel's anticipated arrival. Notices to be given under this Article VII.B shall be deemed properly served on each other when delivered by electronic mail.
- C. Laytime shall commence within the meaning of this Article whether the vessel arrives during or outside normal business hours. Laytime shall not be increased, nor VIWAPA held accountable, for any delay in berthing the



vessel attributable to the failure of the Seller to give the notices set forth in this Article.

D. Allowed laytime shall be thirty-six (36) hours for each and every delivery of the Product under this Contract. VIWAPA and Seller agree, however, that the allowed laytime of thirty-six hours depends upon:

1. Seller's vessel being capable of pumping its entire cargo within thirty (30) hours.
2. Seller's personnel or agents promptly performing the connection and disconnection of discharging hoses.
3. An unloading temperature and pressure as specified in Article IV of this Contract.

E. Time shall not count as laytime, or time on demurrage, due to:

1. Vessel's condition, vessel's facilities, or vessel's failure to comply with U.S. Coast Guard or other governmental agency regulations that do not permit connection, discharging cargo or disconnecting in the allowed lay time.
2. The failure of the Product to meet the contractual quantity or specifications set forth in this Contract.
3. Awaiting customs clearance, and regulations of port authorities, vessel's owners or vessel's master, which prohibit discharging of the cargo at night.
4. Seller's cargo volume exceeds the established maximum cargo volume.

F. If the vessel is delayed at any discharging berth for vessel's purposes, laytime





shall cease when discharging is completed even though hoses are not disconnected. If regulations of port authorities or vessel's owner prohibit discharging of the cargo at night, time so lost shall increase the allowed laytime. If VIWAPA alone prohibits discharging at night, time lost shall count as laytime. In all other cases, Laytime shall continue to run until cargo hoses or loading arms, as the case may be, have been disconnected.

- G. VIWAPA shall pay demurrage per running hours, and pro rata for a part thereof, for all time that exceeds the allowed laytime. VIWAPA and the Seller shall negotiate with respect to the running hours of the demurrage. Demurrage, properly documented, shall be paid at \$417.00 USD per hour.
- H. If discharging has ceased because it is completed or due to any problem with the vessel, or if the discharging rate has decreased to a rate that will not permit discharge of the entire cargo within thirty (30) hours, VIWAPA may order that the vessel be moved from the dock at no cost to VIWAPA. If practical, the vessel shall be allowed to return later and complete discharging. In the event that the discharging rate has decreased to a rate which will not permit discharge of the entire cargo within thirty (30) hours, VIWAPA may delay ordering the vessel to move from the dock and allow pumping to continue, provided that Seller pays the per hour dock fee rate and any other associated cost. Above is not applicable if vessel maintains the allowed pressure and rate is reduced due to shore back pressure.
- I. Seller shall furnish all appropriate documentation and available evidence in support of any demurrage claim that may be brought against VIWAPA.



J. Berthing of all delivery vessels at the Krum Bay Terminal and the Richmond Terminal may occur only during daylight hours.

K. ISPS

Sellers Obligations:

Seller warrants that any vessel or barge which it nominates in connection with this Contract upon which any of the goods sold under this Contract are intended to be shipped or are in fact shipped complies at all times with the requirements of the ISPS Code and/or the US Maritime Transportation Security Act 2002 if applicable ("the Regulations"). Seller shall submit and/or provide all and any documentation or information required by the appropriate authorities and/or interested parties related to compliance with the Regulations. Any and all costs and/or expenses and/or losses and/or damages and/or delay whatsoever, save for consequential losses, arising out of or in connection with the failure of the vessel or its owners or charterers to comply with the requirements of the Regulations shall be for Seller's account and shall not count as laytime or time on demurrage or detention.

Buyer's Obligations:

Buyer warrants that any port or place at which the goods sold under this Contract are or are intended to be discharged complies with the requirements of the Regulations. Any and all costs and/or expenses and/or losses and/or damages and/or delay whatsoever, save for consequential losses, arising directly from the failure by the discharge port to comply with



the requirements of the Regulations shall be for Buyer's account and shall count as used laytime or time on demurrage or detention. Buyer's liability for any costs, losses or expenses arising from the failure of the discharge port or place to comply with the Regulations shall be limited to the payment of demurrage, detention, costs, losses or expenses in accordance with the terms of this Contract and in so far as such demurrage, detention, costs, losses, expenses have actually been incurred by the Seller.

**ARTICLE VIII. General Liabilities**

- A. Seller and VIWAPA agree to make, use, provide, and take commercially reasonable precautions, safeguards, and protection against the occurrence or happening of injuries, death, and/or damages to any person or property during the delivery process, in accordance with their respective responsibilities under this Contract. Seller agrees to be responsible for, and indemnify and save VIWAPA harmless from costs, expenses, and damages, including liability to third parties and reasonable attorneys' fees (hereinafter referred to collectively as "Damages") resulting from (i) any breach by Seller of any of its obligations under this Contract (ii) the gross negligence or willful misconduct of Seller, its employees, agents, subcontractors or assigns, and except to the extent that any such Damages result from the negligence or willful misconduct of VIWAPA or its employees, agents, subcontractors, or assigns. VIWAPA agrees to be responsible for, and indemnify, and save Seller harmless from, all Damages resulting from (i) any breach by VIWAPA of any of its obligations



under this Contract, or (ii) the gross negligence or willful misconduct of VIWAPA, its employees, agents, subcontractors or assigns, except to the extent that any such Damages result from the gross negligence or willful misconduct of Seller or its employees, agents, subcontractors, or assigns.

- B. Seller shall maintain adequate insurance coverage for the duration of the Contract to cover cost of repair or, if incapable of repair, the replacement of any breakage to VIWAPA property or any third-party property caused by carelessness, gross negligence, or lack of skill, etc. on the part of Seller's employees, agents, subcontractors, or assigns in the performance of required deliveries. This will include bodily injury and property damage.
- C. In connection with any potential liability for Damages to third parties hereunder which is subject to indemnification, the Party responsible for indemnification with respect to such Damages shall have the right (but not the obligation) to control any litigation with such third party or parties; in addition, no settlement agreement shall be concluded with any such third party or parties without the prior approval of the Party responsible for indemnification with respect to such Damages.
- D. Neither the Seller nor the Buyer shall be liable, whether in contract, tort or otherwise, for any indirect, punitive, consequential or special losses, damages or expenses of any kind directly or indirectly arising out of or in any way connected with the performance, the suspension of performance, the failure to perform or the termination of this Contract which shall include,



but not limited to loss of profits, costs, loss of production or losses resulting from shutdown of plants, or in ability to perform sales or other Contracts.

- E. For Contract breach, Seller shall in no circumstances be liable for more than the difference between the Contract Price and the market price, based on the nearest available market, as of the date of the Contract breach and will not be liable for any loss of profit, wasted overheads, loss resulting in shut down or reduction in throughput of refinery or plant.

#### **ARTICLE IX. Price**

- A. Price contracted for Product delivered shall be per barrel of 42 U.S. gallons, volume corrected to a temperature of sixty degrees (60°) Fahrenheit.
- B. The unit price in dollars per barrel (\$/bbl.) shall be computed using a price formula of the specified postings plus the fixed premium offered by Seller. The price of each delivery will be based on the Platts US Marketscan Report on the day of loading the shipment, or the last Platts US Marketscan Report before loading. The pricing formula is as follows:
1. One hundred (100) percent of ULSD from the average of quotations for the "U.S. Gulf Coast Waterborne" as published by the Platts US Marketscan Report; rounded to four (4) decimal places.
  2. Said result shall be then multiplied by 0.42 to convert from cents per gallon to dollars per barrel.



Type text here



3. Plus, the fixed premium of: Based on the price options selected by VIWAPA BBL for deliveries to Krum Bay and Richmond Terminals (See table below).

|             |                 |  |
|-------------|-----------------|--|
| Prepayment  | +/- 25,000 bbl. | Platts USGC ULSD Waterborne + \$0.325 (\$13.65/bbl.) |
|             | +/- 15,000 bbl. | Platts USGC ULSD Waterborne + \$0.495 (\$20.79/bbl.) |
| Net 30 Days | +/- 25,000 bbl. | Platts USGC ULSD Waterborne + \$0.355 (\$14.91/bbl.) |
|             | +/- 15,000 bbl. | Platts USGC ULSD Waterborne + \$0.525 (\$22.05/bbl.) |

- C. Excise tax, gross receipts tax or any other applicable Virgin Islands taxes, if any, are to be presented as separate line items, and the same are not included in the contracted price.
- D. Price to VIWAPA is an outside duty price. Seller enters into the Contract with the understanding that fuel oil imports to the USVI are exempt from any import duties. Any import duties resulting from a possible change of USVI government regulations shall be borne by VIWAPA.
- E. Seller shall invoice VIWAPA regularly and promptly after the Product is delivered as per option selected by VIWAPA.
- F. Copies of the inspector's certificates of quality and quantity and other supporting documents shall be included with such invoices. Such invoices shall be paid by VIWAPA in U.S. currency immediately available funds, on or before thirty (30) days after completion of delivery, unless VIWAPA chooses to prepay the Product as allowed under Art. IX(B)(3). Where necessary, a provisional invoice price based on the preceding cargo delivery price will be



required if the price for the current delivery is not available. VIWAPA shall pay on the basis of received quality and quantity. Title and risk of loss shall be borne by Seller until the Product passes the permanent flange at the Krum Bay Terminal or the Richmond Terminal, respectively.

- G. If VIWAPA requires a shipment in excess of the maximum monthly volume (25 Barrels) in the same month (30 days), then the first shipment must be paid before loading the second shipment, even if the 30-day credit term has not ended. In the event that VIWAPA received a 25,000-barrel shipment in any given month and before the 30-day credit term ends, VIWAPA requests a second shipment (be it either 15,000 or 25,000 barrels), VIWAPA has the option to pre-pay the second shipment before the same is loaded, provided howsoever that the second shipment is only for 15,000 barrels. If the second shipment is for 25,000 barrels, VIWAPA must pay the first shipment before the second shipment is loaded.

#### **ARTICLE X. New Taxes**

VIWAPA shall be responsible in their entirety for any new or increased taxes, fees, duties, or tariffs applicable to the Product being supplied hereunder that are levied by Federal Law and/or United State Virgin Islands Law. VIWAPA shall reimburse Seller for such taxes, fees or tariffs actually paid by Seller.



#### **ARTICLE XI. Guaranteed Calorific Value**

- A. Seller guarantees that the minimum calorific values of the Product supplied

NH

hereunder shall be as specified herein. However, VIWAPA will not pay any premium for calorific values in excess of the minimum established in Exhibit A, Fuel Specifications.

- B. For any delivery by Seller of the Product that fails to meet such guarantee, there shall be no breach of this Contract. The Parties agree that the deficiency shall be determined in barrels, calculated on the basis of the example attached as Exhibit B, Sample Calculation BTU Deficiency Adjustment, of this Contract. The deficiency thus calculated shall serve as a credit, for an equivalent number of barrels, before computing the fuel billings for such invoice.

## **ARTICLE XII. Measurements and Payment**

- A. 1. The quantity of the Product delivered to VIWAPA shall be determined by shore tank up gauge measurements in Krum Bay Terminal St. Thomas and Richmond Terminal St. Croix shore tanks, respectively; and such measurements, unless otherwise mutually agreed, are to be conducted by an independent inspector mutually agreed to by VIWAPA and Seller. Inspection costs shall be borne equally between VIWAPA and Seller. All measurements shall be corrected to sixty degrees (60°) Fahrenheit using ASTM Petroleum measurements Table 6-B. Quantities certified on the independent inspector's report will be binding for both Parties.
2. Receiving shore tanks shall remain static throughout the entire discharge, and floating roofs (if applicable) shall be 6 inches outside of the critical zone. If these conditions cannot be met, or shore tanks are "active,>' or





inspector cannot verify shore tank measurements, then outturn shall be based on vessel discharge figures with valid vessel experience factor (vef) applied.

3. A full line displacement shall be performed under the inspector's supervision. line displacement quantity differences (line slack) shall be accounted for in the total outturn quantity. In the event the shore tank is found to have received less than the amount pumped by the vessel by more than the measurement tolerance of the shore/vessel tanks, a second line displacement shall be performed in order to verify that the line is in a full condition to assure that vessel and shore tank volumes prove the shoreline to be full. Each time a line displacement is performed, and the shoreline is proved to be slack "not full," line displacements slack line quantity shall be added to the receiving shore tanks to quantify final outturn.
4. If performance of a line displacement is not permitted by Buyer or Buyer's designated discharge facility, whether it be the initial line displacement or one of the subsequent line displacements needed to prove the shoreline is full, then vessel ullages with vessel experience factor (vef) shall be used as determination of the discharged quantity.
5. If the Buyer's designated facility has the capability to offer verifiable evidence of line fullness via one of the other API chapter 17.6 methods, it is agreed that such alternate method shall be permitted. For good order, it is



requested that the buyer's scheduling personnel advise the Seller's scheduler and the independent inspector that this alternate method for determining line fullness will be used.

- B. VIWAPA reserves the right to exclusively select and contract an inspection services company to conduct quality and quantity control and assurance measures at any time during the term of this Contract. If VIWAPA exercises such right, then inspection cost shall be borne fully by VIWAPA. Seller, at its own expense, may send its own inspector to verify and/or witness such measurements. Should any discrepancy arise, at Seller's request, additional measurements shall be performed by an independent inspector. Additional costs due to the controversy will be absorbed by the non-prevailing Party.
- C. Seller shall invoice VIWAPA regularly and promptly after the Product is delivered. Copy(s) of the inspector's certificate(s) shall be included with invoices. Invoice and copy(s) of the Load Port Shore Tank Certificate of Quality and Load Port Vessel Composite Certificate of Quality and discharge Certificate of quantity shall be sent to VIWAPA's Office for making payments per Article XII.D. below. Such invoices shall be paid by VIWAPA in U.S. currency in immediately available fund on or before thirty (30) days after completion of delivery of the Product, unless VIWAPA chooses to prepay the Product as allowed under Art. IX(B)(3).
- D. All the billings and requests for payment shall be mailed or emailed to:

Virgin Islands Water and Power Authority



Attention: Accounts Payable  
PO Box 1450  
St Thomas, Virgin Islands 00804-1450  
Email: AccountsPayable@viwapa.vi

**ARTICLE XIII. Force Majeure**

A. The Parties hereto shall be excused from performing hereunder and shall not be liable for damages or otherwise, if and only to the extent that they shall be unable to perform, or are prevented from performing, their obligations hereunder as a result of a force majeure event. For purposes of this Contract, force majeure means any cause without the fault or negligence, and beyond the reasonable control, of the Party claiming the occurrence of a force majeure event. Force majeure may include, but shall not be limited to, the following: Acts of God, industrial disturbances, acts of terrorism, war, blockages, boycotts, riots, insurrections, epidemics (including any associated quarantine or other containment measures), earthquakes, storms, floods, civil disturbances, lockouts, fires, explosions, interruptions of services due to the acts or failure to act of any governmental authority, provided that (i) these events, or any other claimed as a force majeure event, and/or its effects, are beyond the reasonable control and without the fault or negligence of the Party claiming the force majeure, and (ii) such Party, within five (5) days after the occurrence of the alleged force majeure, give the other Party written notice describing the particulars of the occurrence and its estimated duration. The Party claiming the force majeure shall resume the performance of its obligations hereunder immediately after the conclusion of the force majeure.



- B. In the event that the force majeure extends for a period of more than sixty (60) consecutive days, either Party may terminate this Contract without further obligation. The burden of proof as to whether a force majeure has occurred shall be on the Party claiming the force majeure.
- C. Notice of termination under this provision shall create no liability to the Parties, except that the Parties shall still be responsible for the payments of amounts due and owing to the other Party not subject to claims.
- D. Force majeure may only be claimed by the Party whose performance is affected by the force majeure event.

**ARTICLE XIV. Contingent Fees**

- A. Seller warrants that it has not employed any person to solicit or secure the Contract upon any contract for a commission, percentage, brokerage, or contingent fee. Breach of this warranty will give VIWAPA the right to immediately terminate the Contract and/or to deduct from any payment the amount of such commission, percentage, brokerage, or contingent fee or to claim said amount by whatever means available under law.
- B. No VIWAPA Board Member, officer, employee or agent of VIWAPA shall be admitted to any share or part of the ensuing Contract or to any benefit that may arise there from, but this provision shall not be construed to extend to the ensuing Contract if made with a well-known oil corporation for its general benefit, although said corporation employs a relative, by reasons of consanguinity or affinity, to a



VIWAPA employee.

- C. Seller represents and warrants that it is authorized to enter into and to perform its obligations under this Contract and that it is not prohibited from doing business in the United States Virgin Islands or barred from contracting with the Virgin Islands Water and Power Authority.

**ARTICLE XV. Suspension of Performance**

Seller shall have the right, upon five (5) days' prior notice to VIWAPA, to suspend delivery of the Product in the event of any non-payment by VIWAPA of any invoice within the time period set forth in this Contract, until such overdue invoice is paid in full.

**ARTICLE XVI. Contract Assignment**

A. This Contract, as well as any of the rights, duties, liabilities, and obligations under it, cannot be assigned, transferred, subcontracted, hypothecated, or otherwise disposed of by either Party without the prior written consent of the other, except that Seller and its assigns may without such consent assign all or a portion of their rights to receive and obtain payment under the Contract in connection with securitization or bank funding arrangements. Any such assignment will not reduce Seller's obligations under this contract. Notwithstanding this clause, Seller may charter other vessels (tugs, barges, etc.) from third parties to transport the Product, provided, that the Seller has received written approval from VIWAPA to charter other vessels and the chartered vessels comply with the Contract requirements.

B. VIWAPA does not favor requests for assignment, transfers, hypothecation, or other type of disposal of the Contract, and/or duties and obligations under it, and will be



reluctant to approve any request to that effect, unless, in the judgment of VIWAPA, the particular circumstances of the request warrant its approval and the assignment, transfer of hypothecation or disposal does not operate against VIWAPA's best interests.

**ARTICLE XVII. Notices**

- A. 1. Except with respect to notices given pursuant to Article IV. B. hereof, any notice to be given hereunder shall be in writing and will be sufficiently served when delivered in person or sent certified mail or by e-mail to the following addresses:

To: Virgin Islands Water and Power Authority  
PO Box 1450  
St Thomas, Virgin Islands 00804  
Attention: Noel Hodge, Interim Executive Director  
E-mail: Noel.Hodge@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@viwapavi.vi

Seller: **Borinken Towing and Salvage, LLC**  
18 Estate Orange Grove Suite 4A  
Christiansted St. Croix 00820  
Attention: Ruben Iglesias  
E-mail: capt@bmg-pr.com

2. Any notices given pursuant to Article IV. B. shall be in writing and given by e-mail to duly authorized representatives of the Parties.

- B. Either Seller or VIWAPA, upon any change of its address as set forth above, shall notify the other Party in writing, and after giving of such notice, the address therein specified shall be deemed the address of such Party for the giving of notices.



**ARTICLE XVIII. Modifications and Novation**

No modification, change, renewal, extension, discharge, or waiver of this Contract, or any of the provisions contained herein, shall be valid and binding except by a written, mutual contract of the Parties executed by a duly authorized officer of each Party. VIWAPA and Seller expressly agree that no amendment or change order which may be made to this Contract, during its term, shall be understood as a contractual novation, unless both Parties agree to it, specifically and in writing. The previous provision shall be equally applicable in such other cases where one Party gives the other a time extension for the compliance of any of its obligations under this Contract, or where one Party waives any claim or demand of any of its credits or rights under the Contract.

**ARTICLE XIX. Choice of Law**

This Contract shall be governed by and construed in accordance with the laws of the U.S. Virgin Islands. Any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the U.S. District Court of the United States Virgin Islands. TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ITS RIGHT TO JURY TRIAL OF ANY DISPUTE OR ACTION ARISING OUT OF OR RELATED TO THIS CONTRACT.

**ARTICLE XX. Separability**

If a court of competent jurisdiction declares any of the Contract provisions as null or invalid, such holding will not affect the validity and effectiveness of the remaining provisions of the Contract and the Parties agree to comply with their respective obligations under such provisions not included by the judicial declaration.



**ARTICLE XXI. Entire Contract**


This Contract constitutes the entire contract of the Parties as to the subject matter; however, should there be any difficulty or differences **in** understanding, interpreting, or applying its terms, the Parties shall look for guidance and directives within the terms and **conditions** of the corresponding Quotation and Seller's Proposal.

*Dated: December 31, 2021*


IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly

executed as of December 31, 2021, at St. Thomas, Virgin Islands.

**BORINKEN TOWING AND SALVAGE, LLC**

  
\_\_\_\_\_  
Ruben Iglesias  
President BTS, LLC

**VIRGIN ISLANDS WATER &  
POWER AUTHORITY**

  
\_\_\_\_\_  
Noel Hodge  
Interim Executive Director/CEO



## EXHIBIT A

NO. 2 DISTILLATE FUEL SPECIFICATIONS ST. CROIX AND ST. THOMAS  
GENERATING STATIONS

| PARAMETER   | ASTM METHOD                              | MINIMUM                                | MAXIMUM                          |
|---|--|--|----------------------------------|
| Sampling  | C-4057-88                                | -                                      | --                               |
| Gravity, API Degree at 60 °   | 0-4052                                   | 30.0                                   | 43.0                             |
| Viscosity, Kinematic SSU at 100° F  | 0-88 or 0-445                            | 33.0                                   | 40.0                             |
| Water and Sediment,% volume   | D-2709                                   |  | 0.1.                             |
| Flash Point, Degree F, PMCT   | D-93                                     | 130                                    |                                  |
| Sulfur, % weight  | D-4294                                   |  | 0.15                             |
| Ash, wt%  | D-482                                    |  | 0.01                             |
| Pour Point, Degree F  | D-97                                     |  | 30                               |
| Sodium plus Potassium, PPM <sup>2</sup>   | D-3605                                   |  | 1.0                              |
| vanadium, PPM   | D-3605                                   |  | 0.5                              |
| Calcium, PPM  | 0-3605                                   |  | 2.0                              |
| Heating Value, BTU/lb. (Gross) at 60° F   | D-240                                    | 18,600                                 |                                  |
| Distillation Temp. 90% Point degree F   | 086                                      | 540                                    | 700                              |
| Carbon Residue WT.% (10% Bottoms)   | D-524                                    |  | 0.35                             |
| Stability, Pad Reflectance %  | D-6468                                   | 80                                     |                                  |
| Corrosion, 3 hrs @ 50 Deg C   | D-130                                    |  | 1                                |
| Thermal Stability, 90 minutes<br>150 Deg CPAD Rating Dupont<br>Scale<br>OR<br>Thermal Stability<br>Y/Green<br>W Unit<br>OR<br>Oxidation Stability mq/100 ml | D-6468<br><br><br><br><br><br><br>D-2274 | <br><br><br><br><br><br><br>73%<br>65% | 7<br><br><br><br><br><br><br>2.5 |
| Color   |  | Dyed                                   |                                  |
| Cetane Index  | D-976                                    | 35                                     |                                  |
| Lead PPM  | D-3605                                   |  | 1.0                              |
| Nitrogen Wt. %  | D-4629                                   |  | 015                              |
| Particulates, mg/L  | D-2276 (IP-216), D-5452, or D-6217       |  | 2.6                              |
| I Asphaltenes   | D-6560 or tP-143                         |  | None Detectable                  |

<sup>1</sup>Reproducibility and repeatability must be taken into consideration to comply with the max sulfur percent weight specification.

NH

EXHIBIT B

SAMPLE CALCULATION BTU DEFICIENCY ADJUSTMENT

Example of calculation to determine credit due to VIWAPA if Seller supplies fuel of lower heat content than the guaranteed Btu value.

The contracted Gross value is 18,600 Btus per pound of fuel measured at 60 degrees F


Assume Seller delivers 30,000 barrels of fuel measured at 60 degrees F.

Assume the quality certificate of the fuel indicates a heat content of 18,500 Btu per pound.

Therefore:

To calculate the equivalent barrels deficiency, divide the difference of Btus per pound received by the guaranteed minimum and multiply this fraction by the delivered volume.

Example:


$$(30,000 \text{ barrels}) \times ((18,600 - 18,500) / 18,600) = 268.82 \text{ bbl. (deficiency)}$$

*NH*