

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 J. BENTON CONSTRUCTION, LLC**

**SC-22-21**

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

This Contract is entered into this 17 day of December, 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 J. BENTON CONSTRUCTION, LLC (hereinafter called the "Contractor") located at 3000 Orange Grove St. Christiansted, St. Croix VI, 00820, for the underground installation of a civil and electrical infrastructure located at the Container Port Area on the island of St. Croix, U.S Virgin Islands. 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 install all material, and supply all tools, equipment, manpower, safety devices, labor, and all things necessary to

complete the Scope of Work (the "Work"). The Work shall be completed in accordance with Authority's Request for Proposal PR-14-20 and includes but is not limited to the following as indicated below:

- Install electrical and communication PVC conduits
- Trench routes must be returned to pre-construction standard with that lane of road asphalt
- Construct and install manholes as specified
- Install end bells or duct terminators to all PVC conduits entering and leaving all manholes
- Install and connect about 15,000 feet of primary cables
- Install and connect a three phase primary submersible switch
- Install cable saddle, cables racks, and arms inside manholes

The Authority shall obtain all permits necessary for the performance of the scope of the work. In addition, the Authority shall furnish the following material to be installed by the Contractor.

- 25 KV primary cables
- 1/0 cu 1000v cables and 500 mcm 1000v cables
- Tee termination kits for inside manholes.
- Load break elbow terminations transformers
- Load break elbow terminations junction boxes
- Secondary cable terminations at transformers (2 hole lugs 1/0,500)
- 13 pcs 18 KV MOV surge arresters
- 8 buckets 5 gallon pails pulling lube

- Cable saddle racks and arms
- 1 pc Submersible switch
- Pad-mount Transformers and Junction boxes
- Primary meter cabinet 200amp inserts
- Cable adapters 1/0 cable

The Work according to the Authority's Request for Proposal (PR-14-20) shall be performed in accordance with the requirements contained in the following documents:

1. The Authority's General Contract Terms with federal requirements dated April 7, 2019, incorporated by reference herein as Appendix "A";
2. The Authority's Request for Proposal PR-14-20 and cover letter, incorporated by reference herein as Appendix "B";
3. The Authority's Request for Proposal PR-14-20, Addendum I dated January 13, 2020, incorporated by reference herein as Appendix "C";
4. The Authority's Request for Proposal PR-14-20, Addendum II dated January 13, 2020 incorporated by reference herein as Appendix "D";
5. The Authority's Request for Proposal PR-14-20, Clarification I dated February 14, 2020 incorporated by reference herein as Appendix "E"
6. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "F"; and
7. The Contractor's response to the Authority's Request for Proposal, dated March 13, 2019, incorporated by referenced herein as Exhibit "A".

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

**2. TERM:** This Contract shall take effect upon its full and final execution by the Parties and in accordance with the commencement date as agreed upon between the

Parties as contained in the written Notice to Proceed (hereinafter "Effective Date").

The Contract shall terminate ninety (90) days from the commencement date as contained in the Notice to Proceed.

**3. CONSIDERATION:** In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the sum Two Million Five Hundred Twenty-Eight Thousand Five Hundred Dollars and 00/100 (\$2,528,500.00).

Payment of any taxes, duties, customs, excise or other fees shall be the sole responsibility of the Contractor. Unless otherwise authorized by law, the Authority shall not be responsible in any way for any taxes, customs, duties, excise or other fees. 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.

The Parties recognize that the funds for the payment of the services performed for the Scope of Work are being provided, whole or in part, by the Federal Emergency Management (FEMA) 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.

**4. TERMS OF PAYMENTS:** All invoices shall be submitted electronically to the Authority's Project Manager. Payments shall be made on a progress billing and payment method, after review and approval by the Authority's Project Manager. Copies of invoices should also be submitted to the Grants Management Department

at [grantsmanagement@viwapa.vi](mailto:grantsmanagement@viwapa.vi). Invoicing shall be submitted upon completion of milestones met for each Phase and approval by the Authority's Project Manager. All invoices will be based upon thirty (30) days payment terms of approval of the invoices. Payments shall be made on a line item percent completion basis, after review and approval of invoices by the Authority's Project Manager, in accordance with the below payment schedule:

<b>Mobilization 5 %</b>	<b>\$ 126,425.00</b>
<b>Civil</b>	
F8-49 to MH 1 10%	\$ 252,850.00
MH 1 to JB 6 10%	\$ 252,850.00
JB 6 to JB 8 10%	\$ 252,850.00
JB 8 to MH 4 10%	\$ 252,850.00
<b>Paving 5%</b>	<b>\$ 126,425.00</b>
<b>Punch List 5%</b>	<b>\$ 126,425.00</b>
<b>Electrical</b>	
F8-49 to MH 1 10%	\$ 252,850.00
MH 1 to JB 6 10%	\$ 252,850.00
JB 6 to JB 8 10%	\$ 252,850.00
JB 8 to JB 11 5%	\$ 126,425.00
<b>Cable Testing 5%</b>	<b>\$ 126,425.00</b>
<b>Punch List 5%</b>	<b>\$ 126,425.00</b>
<b>TOTAL CONSIDERATION</b>	<b>\$ 2,528,500.00</b>

**\*Note: A ten percent (10%) retainage shall be withheld from each progress payment and shall be released to the Contractor upon completion of the project.**

5. **GROSS RECEIPT TAXES:** Title 33, Section 44 of the Virgin Islands Code, as amended, requires the Authority when making a payment under this

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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 \$126,425.00. 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 laws with respect to licensing which must be obtained in connection with its business operation(s). The Contractor and all subcontractors hired in connection with this scope of work shall obtain all necessary and applicable business license(s) and present copies to the Authority at the time of contract execution. Failure to present copies of license(s) shall be grounds to consider the Contract as void or the Authority may terminate this agreement if the

Contractor is provided additional time to secure its license and fails to do so in a timely manner.

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

**8. BOND REQUIREMENTS:** The Contractor shall obtain a performance bond and payment bond, each 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 discretion 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.

**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. LIQUIDATED DAMAGES:** The Authority may assess liquidated damages solely for Contractor's delay in performing the work, to compensate the Authority for loss of use of the project during the time it should have been completed but was still under construction. For each day that performance of the Work extends beyond the specified completion date, for any cause other than excusable causes as defined in Paragraph 13(a) of the Authority's attached General Contract Terms, the Contractor and his sureties shall be liable to the Authority and shall be assessed Five Hundred Forty Dollars (\$540.00) a day subject to a maximum of liquidated damages not to exceed Five (5%) percent of the total contract consideration stated herein. The Authority may deduct any sum owing from any payment due to Contractor pursuant to this contract or exercise any remedies under law to collect such amount.

**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 reasonably incurred in connection therewith.

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

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

EPA	Environmental Protection Agency
OSHA	Occupational Safety and Health Administration
NEC	National Electrical Code
NEMA	National Electric Manufactures Association
RCRA	Resource Conversation and Recovery Act
TSCA	Toxic Substance and Control Act
DOT	Department of Transportation
ASTM	American Society of Testing Materials
AGMA	American Generator Manufacture's Association
NESC	National Electric Safety Code
AWWA	American Water Works Association
NSI	National Sanitation Foundation
FP-96-	Federal Highway Administration

The Contractor shall also comply with all applicable U.S. Virgin Islands' building, plumbing, mechanical, electrical, fire, health, and public safety codes in connection with the performance of the scope of work.

**13. COVID-19 REQUIREMENTS:** The Contractor shall, during the pendency of this agreement develop a plan to ensure the health and safety of its workforce during the COVID-19 Pandemic. The Authority recommends the Contractor utilize the guidance referenced in the Electric Subsector Coordinating Councils (ESCC) Revision #2 document dated May 5, 2020, as well as other applicable OSHA and CDC guidance documents in the preparation of its plan. At execution of this agreement, Contractor shall present the Authority with a copy of its COVID-19 plan.

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

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

The Authority designates the following:

Denika Charles  
Project Coordinator  
V.I. Water and Power Authority  
P.O. Box 1450  
St. Thomas, U.S. Virgin Islands 00804-1450  
(340) 227-6226  
[denika.charles@viwapa.vi](mailto:denika.charles@viwapa.vi)

The Contractor designates the following:

James Benton  
J. Benton Construction, LLC  
3000 Orange Grove  
St. Christiansted, St. Croix VI, 00820.  
(340) 715-2222 / (340) 715-2223.  
[jbenton@jbcvi.com](mailto:jbenton@jbcvi.com)

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

**16. LIABILITY OF OTHERS:** Nothing in this Contract shall be construed to impose any liability against the Authority to persons, firms, associations, or corporations engaged by the Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Authority liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations, and taxes of Contractor of whatsoever nature, including but not limited to employment insurance and social security taxes for Contractor, its servants, agents, employees, or independent Contractors.

**17. INSURANCE:** The Contractor shall, at 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 with Federal Requirements dated April 07, 2019. A copy of the insurance certificate adding the Authority as a Certificate Holder and an additional insured must be presented to the Authority's Contracting officer at contract execution.

**18. INDEMNIFICATION:** If the Authority is entitled to defense and 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.

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

1. The Authority's General Contract Terms with federal requirements dated April 7, 2019, incorporated by reference herein as Appendix "A";
2. The Authority's Request for Proposal PR-14-20 and cover letter, incorporated by reference herein as Appendix "B";
3. The Authority's Request for Proposal PR-14-20, Addendum I dated January 13, 2020, incorporated by reference herein as Appendix "C";
4. The Authority's Request for Proposal PR-14-20, Addendum II dated January 13, 2020 incorporated by reference herein as Appendix "D";
5. The Authority's Request for Proposal PR-14-20, Clarification I dated February 14, 2020 incorporated by reference herein as Appendix "E";

6. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "F"; and
7. Contractor's response to the Authority's Request for Proposal, dated March 13, 2019, incorporated by referenced herein as Exhibit "A".

In the event of any conflict between the written agreements comprising the Contract, the matter will be resolved according to the following descending order of precedence: (1) This Contract; (2) the Authority's General Contract Terms with Federal Requirements; (3) the Authority's Request for Proposal and its Addenda thereto attached, and the Contractor's proposal response. The Contract and Contract documents constitute the entire agreement between the Parties

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

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

reimburse the Virgin Islands Water & Power Authority for any payment(s) heretofore made failing which this contract may be terminated.

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

**23. GOVERNING LAW:** The laws of the U.S. Virgin Islands shall govern the interpretation and construction of this Agreement to the extent applicable. The Parties agree that all causes of action against either Party shall be brought in the court of competent jurisdiction in the Virgin Islands. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

**24. 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.

**25. NOTICE:** Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid, or received, via e mail, addressed to the Parties as follows:

The Authority: Lawrence J. Kupfer  
Executive Director (CEO)  
V.I. Water and Power Authority  
P.O. Box 1450  
St. Thomas, U.S. Virgin Islands 00804  
[lawrence.kupfer@viwapa.vi](mailto:lawrence.kupfer@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](mailto:legaldepartment@viwapa.vi)

The Contractor: James Benton  
J. Benton Construction, LLC  
3000 Orange Grove  
St. Christiansted, St. Croix VI, 00820.  
(340) 715-2222 / (340) 715-2223  
[jbenton@jbcvi.com](mailto:jbenton@jbcvi.com)

**26. 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.

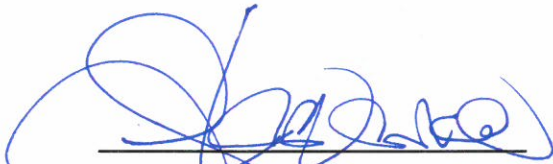
**27. SURVIVAL:** The following sections of this Contract will survive the termination or expiration of this Contract and will remain in effect until fulfilled:

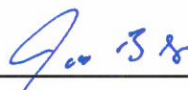
Clause 3: Consideration  
Clause 18: Indemnification  
Clause 19: Contract Documents (Order of Precedence)  
Clause 23: Governing Law

**28. ENTIRE AGREEMENT:** This Contract and the Contract Documents constitute the entire agreement of the Parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.

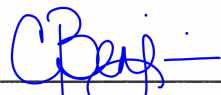
**IN WITNESS WHEREOF,** the Parties hereto have duly executed this Agreement on the day, month and year first above-written.


**J. BENTON CONSTRUCTION, LLC**

  
\_\_\_\_\_  
WITNESS

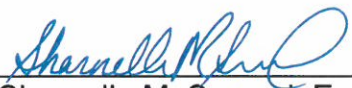
By:  12/17/20  
James Benton Date  
President

**V.I. WATER AND POWER AUTHORITY**

  
\_\_\_\_\_  
WITNESS

By:  12/17/2020  
Lawrence J. Kupfer Date  
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

 12/08/2020  
Sharnelle M. Samuel, Esq. Date  
Acting General Counsel

Attachments