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Your Ref:
Our Ref: M1640.00010/JLH DM3\7135904.2

28 October 2020

PRIVILEGED AND CONFIDENTIAL

BY EMAIL ONLY

Mr Carlos E. Sosa
Global Project Strategy
267 Minorca Av Suite 100
Coral Gables, Fl 33134
csosa@gpsconsult.net

Dear Mr. Sosa:

Our Client: Virgin Islands Water and Power Authority

Project: LED Streetlights, Pole-Mounted Solar Units, Associated Equipment and Services

Engagement Letter for GPS Consultants as an Expert

Thank you for Global Project Strategy ("GPS") agreement to act as a consulting expert witness, in the fields of quantum and delay, in this matter. As legal counsel for the Virgin Islands Water and Power Authority, Duane Morris proposes to retain you as an independent consultant initially for preparation for a mediation of disputes with Petra Systems Inc. Your initial role would be as a non-testifying expert for purposes of the mediation. Your role may be changed from time-to-time by mutual agreement. This engagement may or may not progress into your designation as a testifying witness in an arbitration or lawsuit. Until such time as a decision is made to designate you as a testifying expert, you will be considered a non-testifying expert.

This engagement may involve producing an expert report on the assessment of the Project account and claims raised by either party, responding to any questions in relation to your report and, if necessary, participating in discussions with the opponent's expert if one is appointed. You may

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also be required to provide support during the mediation. Your role may be modified to include performing an analysis, providing a report and giving oral evidence at the arbitral hearing if matters progress that far and carry out any other duties appropriate to the role of an expert witness, as directed by the tribunal or instructed by us.

We ask that you confirm that you have performed a conflicts check regarding the parties and the lawyers involved in this matter, and that you and your firm have no conflicts.

I. THE PARTIES

- A. Our client is the Virgin Islands Water and Power Authority, a public authority established and existing under the laws of the United States Virgin Islands with its offices at 171 Altona, Second Floor, St. Thomas, Virgin Islands 00802 USA (“**WAPA**”).
- B. The adverse party is Petra Systems Inc, a Delaware corporation with its offices at One Cragwood Road, Suite 3030, South Plainfield, New Jersey 07080 (“**Petra**”).
- C. WAPA and Petra are collectively referred to herein as the “**Parties**”.
- D. For the purposes of the contract entered into between the Parties:
 - 1. WAPA is the “**Customer**”; and
 - 2. Petra is the “**Contractor**”.

II. DOCUMENTS

- A. We will shortly be providing you with various Project documents in electronic format. Those documents include those that you requested and other documents that may be relevant.
- B. In the meantime, we enclose herewith the Engineering, Procurement and Construction Agreement dated November 18, 2016 and entered into between WAPA and Petra (the “**Contract**”).
- C. If you require further or additional documents, please do let us know and we / our client will endeavour to provide them where possible.

III. BACKGROUND

The background information provided below is based on a preliminary understanding and is for your information only. If any of the background information forms a basis of any

opinion that you may develop or is considered by you during your analysis, we expect the GPS will conduct investigations and obtain information to confirm and independently verify the background information provided herein.

- A. Pursuant to the Contract, Petra is required to provide the engineering, procurement and installation of 15,722 LED street lights with Smart Light controllers and approximately 10,000 pole-mounted solar units capable of communicating through the TUNet network using the Intelliview Management System.
- B. Petra is also responsible for commissioning the various sectors of the work as installation is completed to confirm that the system operates properly.
- C. The Contract sum / price for the Contract work is \$29,131,000 (subject to adjustments and change orders in accordance with the Contract). Petra's entitlement to payment arises upon completion of various milestones as set out in schedule V of the Contract.
- D. Petra is required to complete the work in accordance with the Project Schedule included at Schedule VI of the Contract (subject to adjustments and change orders in accordance with the Contract).
- E. Petra has failed to complete the work, either within the contractually agreed timescales or at all. Petra has in fact failed to progress the works at all over the past 6 months (or longer).
- F. WAPA is aware that Petra carried out work on the Project prior to hurricanes Irma and Maria in 2017. At that stage, most of the lights and panels installed had not been turned over to WAPA.
- G. WAPA understands that Petra filed an insurance claim with its builders risk carrier for damage caused to the works by the hurricanes. That claim resulted in a settlement. WAPA does not know the extent of the settlement and no settlement monies have been passed down by Petra to WAPA.

IV. SCOPE OF INSTRUCTION

- A. At this stage, GPS is instructed to prepare a preliminary report that gives sufficient particularity to plead WAPA's position in a mediation position statement.
- B. WAPA and Petra are gearing up for a mediation to take place early in 2021. GPS's report will therefore be used for the purposes of that mediation. We would hope to be in a position to review a preliminary report before the 2020 Christmas break.



- C. GPS is not yet required to compile a full expert report for the purposes of arbitration. In the event that mediation is unsuccessful, we will address whether to issue further instructions to progress your report for the benefit of the arbitral tribunal.

V. ISSUES FOR YOU TO ADDRESS

- A. WAPA would like an independent third party review of the Project account to understand where the total account lies and to ascertain whether:
1. further monies are due to Petra and if so, how much; or
 2. whether Petra has been overpaid and a sum is due back to WAPA and if so, how much.
- B. You are accordingly instructed to:
1. Carry out an ascertainment of the measured works aspect of this Project and establish:
 - a. How much of the original scope of work has Petra properly carried out and completed;
 - b. How much is Petra entitled to be paid for that work?
 - c. How much has Petra actually been paid for that work?
 - d. Are further monies due to Petra in respect of the measured works or has Petra been overpaid such that a sum due back from Petra to WAPA
 2. To the extent that there are any Addenda or Change Orders properly issued pursuant to the terms of the Contract:
 - a. How much of the varied scope of work has Petra properly carried out and completed;
 - b. How much is Petra entitled to be paid for that varied scope of works?
 - c. How much has Petra actually been paid for that varied scope of works?



- d. Are further monies due to Petra in respect of any varied scope of works or has Petra been overpaid such that a sum due back from Petra to WAPA?
3. Identify to what extent Petra has complied with the Project Schedule and ascertain the extent of delay damages arising from Petra's delay.
4. Identify any other heads of loss / damage / cost suffered by WAPA that should be included in the account
5. In light of all points listed above, ascertain the overall position on the Petra account.
6. Comment on any other issues that may be relevant.

VI. YOUR REPORT

- A. Your initial report is intended to be used for purposes related to the planned mediation. A subsequent report, if requested, may be used in evidence before the court / tribunal.
- B. Please let us know immediately if, at any time after producing your report, you change your views.
- C. Please also let us know promptly if you need to update your report after it has been issued, for example, if new evidence has come to light, so that we can consider whether an amended version of your report or a supplementary report should be served.

VII. TIMETABLE

- A. For now, please let us have a general idea of timescales for completing an instruction of this nature.
- B. We assume that once you have reviewed the relevant documentation, you will be in a position to provide a better indication of timescales for providing your report.
- C. If this matter proceeds to arbitration, we will discuss timetable and arbitral procedures with you.

VIII. FEES

- A. Please confirm members of the GPS team that will work on this instruction together with their hourly rate.



- B. Please provide an estimate of your fees for agreement by WAPA before commencing any work.
- C. In the event that your fee estimate is likely to materially change, please submit a revised fee estimate for approval before incurring any further fees.
- D. WAPA will be solely responsible for payment of your fees and Duane Morris bears no responsibility or liability for your fees. Duane Morris may review your invoices but your invoices should be directed to WAPA with a copy to Duane Morris.
- E. In addition, Clients will reimburse certain expenses, including coach air fare, hotel, meals, and rental car or taxis while traveling. The cost of your office, utilities, phone service, office equipment and supplies are not reimbursable items.
- F. Your retention as an independent consultant will be on an "as-needed" basis and may, by future mutual agreement, include testimony at deposition, trial or arbitration. You acknowledge that this arrangement does not require a minimum or maximum number of hours that Duane Morris must provide to you. No representation has been made to you that you will earn any minimum amount of annual compensation pursuant to this letter agreement. You are to submit invoices on a monthly basis for your time and expenses, including your subconsultant expenses, and following a review and either approval or modification, payment will be made within 30 days after such approval or modification.
- G. You further acknowledge that your retention as an independent consultant is terminable at the will of Duane Morris or its Clients. Neither Duane Morris nor its Clients will be responsible for any of your insurance, fringe benefits, tax liabilities, or other payroll-related matters. You will be an independent contractor and will not be covered by any worker's compensation policy, health plans, or other non-compensable programs.

IX. CONFIDENTIALITY

- A. You understand that all communications with Duane Morris, WAPA and others related to this engagement, either oral or written, as well as any materials or information developed or received by you pursuant to this arrangement, are made or prepared for purposes of assisting and rendering legal advice to our Clients and thus are protected by applicable legal principles. Therefore, all such communications will be treated as confidential.
- B. The preparation of your work product is an evolving process which is focused and refined as research and document review proceed and as information emerges in litigation. Preliminary conclusions, superseded drafts, notations, analysis, work



lists, and irrelevant data are not part of, and will not be recorded in, your final work product. Such documents may be appropriately discarded on a routine basis as you complete work tasks. Of course, circumstances may arise that require the retention of such drafts or interim documents, including, but not limited to, subpoenas and court orders. You understand that Duane Morris may provide you with instructions regarding document retention or document production procedures that you are expected to follow.

- C. You acknowledge that all materials and information disclosed to you by Duane Morris or its Clients and work you provide to Duane Morris or its Clients are confidential and proprietary. You will not disclose or disseminate such materials, information or work to third parties, nor will you use such materials, information or work for any purpose other than pursuant to this letter agreement. You will abide by all reasonable restrictions placed by Duane Morris or its Clients on the dissemination of materials and work. In the event that you are served with a subpoena or other legal document requesting the disclosure of such materials or work, you will promptly advise Duane Morris of this and will cooperate with all reasonable and lawful requests by Duane Morris or its Clients to prevent the disclosure of confidential and/or proprietary information pursuant to such subpoena or other request.
- D. The assistance to be provided to Duane Morris and its Clients by you, all related communications, and all written materials prepared by or at the direction of us pursuant thereto, are intended in all respects to be protected by the attorney-client privilege, the attorney work product immunity, and other protections and immunities applicable under state or federal law. Moreover, by making information available to you in connection with the performance of the services outlined in this letter, Duane Morris and its Clients do not intend to waive any privilege or immunity applicable to such information. You agree that you will not disclose any of the information referred to in this paragraph to third parties without the express written permission of Duane Morris and/or its Clients, except as required by law.
- E. You agree to preserve all confidences in your services. You agree not to discuss your involvement in this matter with anyone other than Clients' attorneys and designated employees controlling the management of this matter without Duane Morris' approval. You agree that your employment is in support and furtherance of litigation activities that give rise to ethical restrictions on conflicts of interest and you agree to be bound by such restrictions and to disclose and terminate (or limit as instructed) any conflict of interest.

We have received your proposed engagement letter. This letter takes precedence over any terms of your letter that may be in conflict with this letter.



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Duane Morris

If you have any questions in relation to your role as an expert in this matter, please do not hesitate to let us know.

Yours faithfully,

DUANE MORRIS LLP

AGREED:

A handwritten signature in black ink, appearing to be 'C. Sosa', is written over a horizontal line.

Global Project Strategy

AGREED:

A handwritten signature in blue ink, appearing to be 'J. Z...', is written over a horizontal line. To the right of the signature, the letters 'SWS' are handwritten in blue ink.

The Virgin Islands Water and Power Authority