



VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
SAINT THOMAS
U.S. VIRGIN ISLANDS 00804

**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND POWER AUTHORITY
AND FXB, Inc.**

Contract No. SC-29-20

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

This Agreement (hereinafter "the Contract") is entered into this 20th day of August 2020 by and between FXB, Inc. (hereinafter called the "Contractor") located at 5 Christy Drive, Suite 307, Chadds Ford, PA 19317 and the VIRGIN ISLANDS WATER AND POWER AUTHORITY (hereinafter called the "Authority"), located at 9720 Estate Thomas, Post Office Box 1450, St. Thomas, USVI 00804, to provide feeder underground project management services in the US Virgin Islands on behalf of the Authority. The Contractor and the Authority shall hereinafter 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/WORK:** The Scope of Work set forth herein

PAB

shall hereinafter be referred to as the "Work". The Contractor shall provide project management services during the construction and commissioning of transmission and distribution feeder undergrounding, including providing resident observer personnel as outlined in the Authority's RFP PR-09-20 attached hereto and incorporated by reference herein as Appendix "C". Services shall include but not limited to the following:

- Adherence to federal program guidelines
- Oversee large volume of construction projects efficiently and in compliance with all federal, state and local rules and regulations governing funding and local building codes
- Ensure continual quality assurance quality control
- Assist in the permitting process and resolution of regulatory issues
- Secure documentation of construction activity to allow an audit trail through final inspection and close out
- Develop and maintain relationships with customers, utilities, vendors and contractors
- Assist construction managers on job walks, bid evaluations, contractor negotiations and during construction meetings
- Assist during the construction phase of the project by reviewing submittals, change orders, and RFI's and make recommendations to the Authority's Project Manager

The Work shall be performed in accordance with the requirements contained in the following documents:

1. The Authority's Professional General Contract Terms with Federal Requirements dated March 14, 2019. This document is attached hereto and incorporated by reference herein as Appendix "A";

PAB

2. HUD General Provisions "HUD RIDER" attached hereto and made a part hereof as Appendix "B";
3. The Authority's RFP PR-09-20 and cover letter dated October 28, 2019. This document is attached hereto and incorporated by reference herein as Appendix "C";
4. The Authority's Addendum I to PR-09-20. This document is attached hereto and incorporated by reference herein as Appendix "D";
5. The Contractor's Proposal dated November 18, 2019 and incorporated by reference herein as Exhibit "A".

2. **TERM:** This Contract shall take effect upon its full and final execution by the Parties and issuance by the Authority and the execution date as agreed upon between the Parties as contained in the written Notice to Proceed (hereinafter "Effective Date"). The Contract shall terminate two years from the effective date.

3. **CONSIDERATION:** In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the total sum not to exceed **Five Million Nine Hundred Eighty Thousand Seven Dollars and 00/100 (\$5,980,007.00)** based on the various rates provided in Exhibit A (the "Contractor's Response").

Gross receipt taxes, corporate taxes, income taxes, and all other taxes, duties, import fees, vehicle registration fees or other taxes resulting from this project will be the responsibility of Contractor if such taxes are not waived during the emergency.

4. **TERMS OF PAYMENT:** Invoicing shall be submitted monthly based on hourly work. All invoices will be based upon thirty (30) days payment terms of approval of the invoices. Payments shall be made on a progress billing and payment method, after review and approval by the Authority's Project Coordinator, in accordance with the below payment schedule:

PAB

Mobilization shall be 5% of contract consideration. After mobilization, invoices will be issued on a monthly basis. Each invoice submitted shall include the following items:

- a) Number of Hours worked
- b) Hourly rate
- c) Description of tasks performed
- d) Description of materials used
- e) Listing of reports/documentation provided to client
- f) Location of where work was performed (i.e. onsite, off-island home office support, etc.)
- g) Current amount being invoiced
- h) Prior amount invoiced to date
- i) Balance remaining of original contract bid price

Thereafter, payment shall be made net 30 after invoices have been approved by the Authority's project manager.

***Note:** In making such partial payment, there shall be retained ten percent (10%) on the invoiced amount until final completion and acceptance of the work; Providing however that the Contracting Officer at any time after fifty (50%) percent of the work has been completed, may approve the payment of any of the remaining partial payments in full.

5. GROSS RECEIPT TAXES: Title 33, Section 44 of the Virgin Islands Code, as amended, requires that the Authority, when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by the Virgin Islands 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 that for the purposes of complying with Title 33, Section 44 of the Virgin Islands Code, the Authority shall withhold and forward to the V.I. Bureau of Internal Revenue the sum of Two Hundred Nine-Nine Thousand Dollars (\$299,000.35) or such amounts 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 and payment of gross receipts taxes shall be the sole responsibility of the

RAB

Contractor. The Authority shall not be responsible in any manner for any miscalculation or change in law or additional assessments that may affect the amount due herein. In the unlikely event any overpayment is made to the V.I. Bureau of Internal Revenue, the Contractor shall seek repayment from V.I. Bureau of Internal Revenue and not the Authority. Upon written request of the Contractor directed to the Authority's Comptroller, the Authority agrees to provide Contractor with documentation confirming that gross receipts withheld under this agreement were paid to the V.I. Bureau of Internal Revenue in accordance with the provisions herein.

In the event the contract is amended, and the consideration herein increases or decreases, the appropriate amount of Gross Receipt Taxes to reflect the increase or decrease in the consideration will be adjusted.

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

7. **INSURANCE:** The Contractor shall, at his 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 Professional General Contract Terms with Federal Requirements dated March 14, 2019. A copy of the insurance certificate must be presented to the Authority's Contracting officer at contract execution.

BAB

8. 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:

Vernon Alexander
Project Manager
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804-1450
(340) 774-3552, ext. 2273
vernon.alexander@viwapa.vi
(340) 642-6542 (cellular)

The Contractor designates the following:

Peter J. Bonnes, President
FX Bonnes
5 Christy Drive, Suite 307
Chadds Ford, PA 19317
610-476-7272 (phone)
petebonnes@fxbinc.com

9. 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.

10. 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.

11. CONTRACT DOCUMENTS: The Contractor shall perform and complete

PAB

the Work in accordance with the Contract. The "Contract Documents" include:

1. The Authority's Professional General Contract Terms with Federal Requirements dated March 14, 2019. This document is attached hereto and incorporated by reference herein as Appendix "A",
2. Hud General Provisions "HUD RIDER" attached hereto and made a part hereof as Appendix "B"; and
3. The Authority's RFP PR-09-20 and cover letter dated October 28, 2019. This document is attached hereto and incorporated by reference herein as Appendix "C";
4. The Authority's Addendum I to PR-09-20. This document is attached hereto and incorporated by reference herein as Appendix "D";
5. The Contractor's Proposal to perform the Work and schedule received on November 18, 2019 and incorporated by reference herein as Exhibit "A".

In the event of any conflict, the terms of this Contract shall govern.

12. CHANGE ORDERS/ADDITIONAL SERVICES: All change orders or requests for additional services must be approved, in writing, by the Authority's Contracting Officer. 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.

13. GOVERNING LAW: The laws of the United States 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 United States Virgin Islands. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

14. 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,

PAB

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.

15. PROFESSIONAL GENERAL CONTRACT TERMS: This Contract is subject to the Authority Professional General Contract Terms with Federal Requirements dated March 14, 2019 attached hereto and made a part of this Contract as Appendix "A."

16. 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 personally delivered, addressed to the Parties as follows:

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

The Contractor: Peter J. Bonnes, President
 FX Bonnes
 5 Christy Drive, Suite 307
 Chadds Ford, PA 19317
 petebonnes@fxbinc.com

17. DEBARMENT CERTIFICATION: By execution of this 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 it subcontractors with the current "LIST OF

PAB

PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the contractor or subcontractor misrepresents its eligibility to receive contract awards using federal funds, the contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Virgin Islands Water and Power Authority for any payment (s) heretofore made.

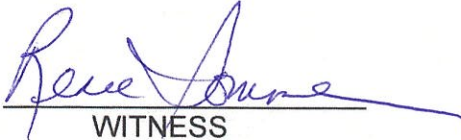
18. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original and the same instrument, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by 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.

19. 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.

PAB



WITNESS


WITNESS

FXB, Inc.


PETER J. BONNES
PRESIDENT

V.I. WATER & POWER AUTHORITY


LAWRENCE J. KUPFER
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

 8/17/2020
LORELEI FARRINGTON
General Counsel

Attachments

PJB