

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



**ADDENDUM I**

This Addendum I (the "Addendum") to Contract SC-33-20 is made on this 11<sup>th</sup> day of June 2024, by and between:

**US Virgin Islands Water and Power Authority**, an autonomous governmental instrumentality incorporated under the laws of the United States Virgin Islands with principal offices at 9720 Estate Thomas, St. Thomas, Virgin Islands 00801, hereinafter referred to as the **"Owner"**;

**Wärtsilä North America Inc.**, a company incorporated under the laws of Maryland with principal offices at 11710 N. Gessner Rd., Suite A, Houston, Texas 77064 USA, hereinafter referred to as **"Wärtsilä"**;

Each singularly referred to as the **"Party"** and collectively referred to as the **"Parties"**.

**WHEREAS**

1. Owner and Wärtsilä have entered into Agreement Number SC-33-20 for the Engineering, Procurement and Construction, with respect to the Randolph Harley Power Plant (RHPP) New Generation of a 36 MW (Gross Capacity) Power Facility and a 9MW/18MWh BESS (Battery Energy Storage System) located in St. Thomas (hereinafter, the **"EPC Agreement"**) dated as of June, 30, 2020;
2. In the frame of such EPC Agreement, certain Change Orders (as defined in the EPC Agreement) were implemented increasing the EPC Agreement's scope of Work (as defined in the EPC Agreement). Wärtsilä performed such additional Work, for which payment remains outstanding;
3. In the frame of such EPC Agreement, Wärtsilä requested of Owner certain Change Orders (as defined in the EPC Agreement) due to changes or stoppages to the Works caused by the Owner. Owner accepted select Change Orders but payment to Wärtsilä for such requested Change Orders remains outstanding;
4. In the frame of such EPC Agreement, Owner quantified to Wärtsilä certain Liquidated Damages ("LD" as defined in the EPC Agreement) due to delays to the Works caused by Wärtsilä. Payment to Owner for such LDs remains outstanding;
5. Such aforesaid Change Orders remained unaddressed and outstanding for more than 24 months, despite several notices issued by Wärtsilä and communications with Owner concerning the same. Wärtsilä incurred financial harm due to the protracted situation and Owner suffered critical energy shortages and financial harm;
6. Consequently, on December 15, 2023, Wärtsilä suspended the Works. Wartsila has asserted its suspension is authorized pursuant to the terms of the EPC Agreement. Owner disagrees that

the suspension was authorized under the terms of EPC Agreement and the Parties have exchanged notices with regard to their diverging viewpoints as to Wärtsilä's entitlement to suspend the Works;

7. The Governor's Executive Order No. 537-2024 dated April 22, 2024, obligates the Owner to act in good faith to expedite the restart of construction and completion of the project to provide needed electrical power generation to Owner and the residents of the US Virgin Islands; and
8. The Parties therefore seek to address the aforementioned Change Orders and, with the aim of resolving any and all controversy related to the matter in subject, and in order to finally, comprehensively, conclusively (without admitting any liability) settle the matter, the Parties have decided to enter into this Addendum under the terms and conditions as delineated herein.

**NOW, THEREFORE** the Parties hereby agree as follows:

## **1 Resolution and Related Obligations**

Effective upon the last signed date of this Addendum, the Parties agree as follows:

1. The Owner shall:
  - a) Accept and formally execute requested Change Orders # 2, 3, 4, 5, 9, 11, 12, 14, 16, 17, and 18, as modified in Attachment A; for the avoidance of doubt, Owner forgoes any defense or argument that requested Change Orders # 2, 3, 4, 5, 9, 11, 12, 14, 16, 17, and 18 are not currently due and payable at the time such Change Orders are executed by both Parties and Wartsila has properly submitted an invoice for payment. The Parties agree that the Change Orders attached hereto under Attachment A are complete and sufficient to be executed, with no need for further documentation to be produced by either Party. The Parties agree that no interest on such Change Orders shall begin to accrue until such Change Orders are executed by both parties and Wärtsilä has properly submitted an invoice for payment.
  - b) No later than 14 days after signing of the Addendum, execution of such change orders and submission of invoices for such change orders, pay a lump sum amount equal to One Million Two Hundred Sixty Seven Thousand Eight Hundred fifty Seven and xx/100 Dollars (\$1,267,857.00) in full satisfaction of requested Change Orders # 2, 3, 4, 5, 9, 11, 12, 14, 16, 17, and 18.
  - c) Accept Change Order # 6 in the amount of Two Million Five Hundred Thirty Six Thousand Four Hundred One and xx/100 Dollars (\$2,536,401.00) and formally execute the same; for the avoidance of doubt, Owner forgoes any defense or argument that requested Change Order #6 is not currently due and payable. The Parties agree that

Change Order # 6 is complete and sufficient to be executed, with no need for further documentation to be produced by either Party. The Parties agree that no interest on this change order shall begin to accrue until such change order is executed by both parties and Wärtsilä has properly submitted an invoice for payment.

- d) No later than 14 days after signing of the Addendum, execution of such change order and submission of related invoice, pay a lump sum amount equal to Two Million Five Hundred Thirty-Six Thousand Four Hundred One and xx/100 Dollars (\$2,536,401.00) related to requested Change Order # 6 which is hereby incorporated by reference;
- e) (i) Accept and formally execute requested Change Orders # 7.1, 7.1.1, 7.1.2, 7.2 Rev 1, 7.2.1 and 7.2.2 in an amount to be determined but which final sum shall total in excess of Five Million and xx/100 Dollars (\$5,000,000.00). Owner forgoes any defense or argument that requested Change Orders # 7.1, 7.1.1, 7.1.2, 7.2 Rev 1, 7.2.1 and 7.2.2 are not currently due and payable in a minimum amount of Five Million and xx/100 Dollars (\$5,000,000.00), at the time such change orders are executed by the Parties. The Parties agree that the Change Orders in question are complete and sufficient to be executed, with no need for further documentation to be produced by either Party. The Parties agree that no interest on these change orders shall begin to accrue until such change orders are executed by both parties and Wartsila has properly submitted an invoice for payment;
- (ii) In connection with Section 1.1.(e)(i), Owner shall pay a preliminary lump sum amount equal to Five Million and xx/100 Dollars (\$5,000,000.00) related to Change Orders # 7.1, 7.1.1, 7.1.2, 7.2 Rev 1, 7.2.1 and 7.2.2, which are hereby incorporated by reference, no later than fourteen (14) days after signing of the Addendum, execution of such change orders and submission of invoices for such change orders, without prejudice to Section 1.1(g) below. This payment is agreed by the Parties to authorize the restart of the Works (as defined in the EPC Agreement), subject to a period of remobilization not to exceed thirty (30) days from receipt of the aforementioned payment;
- (iii) The parties further agree that an amount, not to exceed Two Million and xx/100 Dollars (\$2,000,000.00) additionally remains due and owing by Owner to Wärtsilä on requested Change Orders # 7.1, 7.1.1, 7.1.2, 7.2 Rev 1, 7.2.1 and 7.2.2 and shall be distributed in accordance with Section 1.1(g) below.
- f) Grant to Wärtsilä an extension of the Substantial Completion Deadline for the Plant (as defined in the EPC Agreement) until 5 months after the date on which Owner makes available to Wärtsilä liquid propane as per Section 2 below and waive any claim related to liquidated damages for delay under the EPC Agreement until after such date;
- g) Pursuant to Section 1.1(e)(iii) above, pay an amount not to exceed Two Million and xx/100 Dollars (\$2,000,000.00) to Wärtsilä upon reaching Substantial Completion for the Plant (as defined in the EPC Agreement), as outlined in the schedule below:

- i. on or before eighty five (85) days from the day that the Owner makes available to Wärtsilä liquid propane as per Section 2 below – payment of Two Million and xx/100 Dollars (\$2,000,000.00);
- ii. between eighty-six (86) and one hundred (100) days from the day that the Owner makes available to Wärtsilä liquid propane as per Section 2 below – payment of One Million Five Hundred Thousand and xx/100 Dollars (\$1,500,000.00);
- iii. between one hundred and one (101) and one hundred and twenty (120) days from the day that the Owner makes available to Wärtsilä liquid propane as per Section 2 below – payment of One Million and xx/100 Dollars (\$1,000,000.00);
- iv. between one hundred and twenty-one (121) and one hundred and fifty (150) days from the day that the Owner makes available to Wärtsilä liquid propane as per Section 2 below – payment of Five Hundred Thousand and xx/100 Dollars (\$500,000.00); and
- v. day one hundred and fifty-one (151) and thereafter from the day that the Owner makes available to Wärtsilä liquid propane as per Section 2 below – no additional payment will be due to Wärtsilä.
- vi. The parties also acknowledge, with regard to the battery module for the BESS (as defined in the EPC Agreement), that due to several factors, including the postponing of the manufacturing slot at the request of the Owner, there were shipping difficulties, and longer than planned shipping duration (mainly longer harbor storage), resulting in additional days for the period from manufacturing to delivery at site of the batteries. Due to the extended duration of battery modules in storage, the battery module vendor stated in writing it can no longer guarantee degradation, which means that Wärtsilä cannot in turn guarantee the Capacity Guarantee (as defined in the EPC Agreement). The parties therefore further agree that, due to the prolonged battery module storage, the Capacity Guarantee as well as all its contractual references (e.g. article 1.6, Appendix 12 insofar as Capacity Guarantee is concerned and Appendix 7B insofar as Capacity guarantee is concerned) are to be removed from the EPC Agreement and the Owner waives any right connected to the Capacity Guarantee. The Contractor's Warranty as defined in the Agreement shall remain in effect from Substantial Completion or Commercial Operation as per the durations defined in Agreement article 13.3.2. The Contractor will guarantee that the battery module condition will be evaluated by CATL, to confirm acceptable condition for daily operation.

- h) Grant to Wärtsilä an extension of the Substantial Completion Deadline for the BESS (as defined in the EPC Agreement) until 2 months following receipt of the preliminary lump sum amount equal to Five Million and xx/100 Dollars (\$5,000,000.00) related to Change Orders # 7.1, 7.1.1, 7.1.2, 7.2 Rev 1, 7.2.1 and 7.2.2 and waive any claim related to liquidated damages for delay under the EPC Agreement until after such date.
- 2. The Owner shall also make available to Wärtsilä liquid propane in a quantity and manner pursuant to the EPC Agreement no later than 45 days after Wärtsilä resumes the Works as per Section 1.3(a) below. Should the Owner fail to comply with its obligation to make liquid propane available, the Parties shall agree upon an amendment to the EPC Agreement related to the terms and conditions according to which Wärtsilä shall proceed with commissioning and testing the Facility (as defined in the EPC Agreement) on ultra-low sulfur diesel only until liquid propane is available, further to which commissioning and testing shall be carried out with regard to liquid propane as well. For the avoidance of doubt, nothing in this Addendum should be construed to limit Wärtsilä's ability to seek any available remedies, including, but not limited to, submitting additional change orders or stopping work, should Owner fail to provide liquid propane in compliance with this Addendum and the EPC Agreement.
- 3. Subject to Section 1.1(e) above, Wärtsilä shall:
  - a) Resume the Works effective 30 days after receipt of payment as envisaged in Section 1.1(e) of this Addendum.
  - b) For the avoidance of doubt, Wärtsilä represents that the Change Orders referenced herein represent all additions to the Work until the date of this Addendum and waives any further claims to modifications or delays through the date of execution of this Addendum.
- 4. Following the date of execution of this Addendum, the Parties acknowledge and agree that Change Orders shall adhere to the provisions of the EPC Agreement. Specifically, per Section 6.1, to be accepted, Change Orders must be in writing, compliant with the terms of Appendix 13 to the EPC Agreement, signed by both Parties and Wärtsilä shall not be obligated to proceed with any changes or extra work until the price of such change or extra work and its effect have been agreed upon between Owner and Wärtsilä in writing.

## **2 Release**

The Parties reserve all of their rights and remedies under the law and EPC Agreement unless specifically stated herein.

Upon fulfillment of both Parties' obligations under this Addendum, the Parties hereby release and discharge each other from any and all claims and causes of action, whether known or unknown, that have arisen before the execution of this Addendum, including, without limiting

the generality of the foregoing, any or all claims that were or could have been brought with regard to the scope of this Addendum.

Upon fulfillment of both Parties' obligations under this Addendum, the Parties hereby acknowledge that they have no financial responsibility or liability whatsoever towards each other regarding the obligations and rights arising out of or in connection with the scope of this Addendum. Each Party shall therefore release and discharge each other from any and all claims and causes of action, whether known or unknown, that may arise in connection with the scope of this Addendum.

For the avoidance of doubt, the Parties' obligations under this Addendum will not be deemed fulfilled unless and until the Parties comply with the terms contemplated in point 1.1 above.

Additionally, for the avoidance of doubt, the Parties' rights and obligations under the EPC Agreement remain in full force and effect, including its provisions relating to Owner's obligations to make payments to Wärtsilä of amounts that are to become due and payable pursuant to the EPC Agreement, as well as Wärtsilä's right to seek additional compensation pursuant to future agreed upon requested Change Orders, executed with prior written approval, including, but not limited to, requested Change Orders and Owner's rights to seek additional compensation or damages for any delay liquidated damages which may accrue after the dates of the revised Substantial Completion Deadlines as set forth herein. For the avoidance of doubt, this Release replaces, supersedes, and trumps any purported release in any requested Change Order or other document that has been executed or submitted. Furthermore, nothing in this Release should be construed to limit Wärtsilä's ability to seek any available remedies, including, but not limited to, submitting additional change orders, should Owner fail to provide liquid propane in compliance with this Addendum and the EPC Agreement.

### **3 Amendment**

No modification, amendment, or other changes to this Addendum shall be binding on any Party unless consent has been given in writing by all Parties to this Addendum.

### **4 Assignment**

No Party shall assign this Addendum nor any of its obligations contained herein without the other Parties' written consent.

### **5 Construction.**

Each of the Parties has participated in the drafting of this Addendum after consulting with counsel. Therefore, the language of this Addendum shall not be presumptively construed against any of the Parties.

## **6 Governing Law and Dispute Settlement**

This Addendum and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the substantive laws of the State of New York. Parties shall attempt to settle any dispute arising under this Addendum amicably before the commencement of any dispute resolution mechanism. However, unless Parties agree otherwise, any dispute resolution mechanism may be commenced as per the terms of the Agreement.

## **7 Severability**

The invalidity, in whole or in part, of any of the foregoing articles, clauses, sections or paragraphs of this Addendum will not affect the validity of the remainder of such articles, clauses, sections or paragraphs.

## **8 Counterparts**

This Addendum may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Addendum.

*Signature Page to Follow*

**IN WITNESS WHEREOF** the Parties have entered into this Addendum I as of the date first written above.

VI Water & Power Authority (Owner)

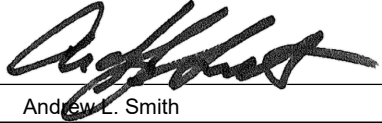
Wärtsilä

**By:**

**Name:**

**Title:**

**Date:**



Andrew L. Smith

Chief Executive Officer

06.18.2024

**By:**

**Name:**

**Title:**

**Date:**



Anna Jarowicz

Senior Project Manager

June 12, 2024