

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 VIRGIN ISLANDS PAVING INC**

Contract No. SC-23-20

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

This Agreement (hereinafter "the Contract") is entered into this 22nd day of May, 2020 by and between the VIRGIN ISLANDS WATER AND POWER AUTHORITY (hereinafter called the "Authority"), located at 9720 Estate Thomas, P. O. Box 1450, St. Thomas, USVI 00804 and VIRGIN ISLANDS PAVING INC (hereinafter called the "Contractor") at mailing address P. O. Box 4720, Kingshill, St. Croix VI 00851, for the underground installation of the civil and electrical infrastructure located at Midland (along Route 663) on St. Croix, 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 the material, supply tools equipment, manpower, safety devices, labor, supervision and all things necessary

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to complete the Scope of Work (the "Work"). The Work shall consist of the following as indicated below:

- Provide AS- Built Drawing for all changes to design along with GPS coordinates indicating location of duct bank
- Install cable saddle cables racks and arms inside manholes
- Provide and install ground connections to ground rods and neutral cables inside each manhole
- Provide excavation and backfilling for new duct banks, manholes and handholes
- Provide cutting, patching, tree removal, retaining walls
- Form duct banks in accordance with contract documents
- Construct duct banks, including all ducts bank materials and accessories in accordance with contract documents
- Furnish and install (or construct) manholes and manhole accessories in accordance with contract documents
- Furnish and install (or construct) handholes and all associated material in accordance with contract documents
- All other associated work shown in the drawings and bid documents of the Authority's Request for Proposal (PR-17-20) and addendums

The Scope of Work according to the Authority's Request for Proposal (PR-17-20) (hereinafter the "Work") shall be performed in accordance with the requirements contained in the following documents:

- i) The Authority's General Contract Terms dated April 7, 2019, incorporated by reference herein as Appendix "A"
- ii) The Authority's Request for Proposal, PR-17-20, incorporated by reference herein as Appendix "B"



- iii) The Authority's Addendum I and cover letter dated March 11, 2020, incorporated by reference herein as Appendix "C";
- iv) The Authority's Addendum II incorporated by referenced herein as Appendix "D";
- v) Contractor's response to the Authority's Request for Proposal, dated March 13, 2020, incorporated by reference herein as Exhibit "A."

The Contractor shall perform the Work in accordance with its bid 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 full and final execution by the Parties and issuance by the Authority of a Notice to Proceed (hereinafter "Effective Date"). The Contract shall terminate one hundred twenty (120) calendar days from the issuance of the Notice to Proceed. Time is of the essence in the Contractor's performance of the Work. To assist the Authority in ascertaining the timeliness of the Contractor's supply of the work, the Contractor shall deliver to the Project Coordinator written progress reports every week stating in detail the progress in the performance of the Work. The Contractor agrees that Work shall be performed regularly, diligently and uninterruptedly at such rates of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Authority that the time for completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the climatic range and unusual prevailing conditions in the Virgin Islands.



3. **CONSIDERATION:** In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the sum of Two Million Nine Hundred Fifty-Six Thousand and Forty-Six Dollars (\$2,956,046.00).

The consideration herein shall be for all Work performed by the Contractor pursuant to this Contract. 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.

4. **TERMS OF PAYMENTS:** All invoices shall be submitted electronically to the Project Manager. Invoices should also be submitted to the Grants Management Department at grantsmanagement@viwapa.vi . Invoicing shall be submitted upon completion of milestones met for each Phase. 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:



Mobilization	(10%)	\$ 295,604.60
1. Civil		
a. MH 1 to MH 3	(5%)	\$ 147,802.30
b. MH 2 to MH 3	(5%)	\$ 147,802.30
c. MH 3 to MH 6	(5%)	\$ 147,802.30
d. MH 6 to MH 7	(5%)	\$ 147,802.30
e. MH 7 to MH 11	(10%)	\$ 295,604.60
f. MH 7 to MH 12	(5%)	\$ 147,802.30
g. MH to Transformers	(5%)	\$ 147,802.30
h. Paving	(5%)	\$ 147,802.30
2. Electrical		
a. MH1 to MH 3	(5%)	\$ 147,802.30
b. MH 2 to MH 3	(5%)	\$ 147,802.30
c. MH3 to MH 6	(5%)	\$ 147,802.30
d. MH 6 to MH 7	(5%)	\$ 147,802.30
e. MH 7 to MH 9	(5%)	\$ 147,802.30
f. MH 9 to MH 11	(10%)	\$ 295,604.60
g. Cable Testing	(5%)	\$ 147,802.30
h. Punch List	(5%)	\$ 147,802.30
Total Contract Consideration		\$2,956,046.00

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

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 One Hundred Forty-Seven Thousand, Eight Hundred and Two Dollars and Thirty Cents (\$147,802.30) 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 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: Contractor must comply with all Virgin Islands' laws with respect to licensing which must be obtained in connection with its business operation(s). Contractor shall further ensure that all subcontractors hired in connection with this Scope of Work comply with all Virgin Islands business license requirements. All necessary and applicable license(s) for Contractor and its subcontractor(s) shall be obtained by the Contractor and copies presented to the Contracting Officer concurrent with its execution of the Contract. Failure by Contractor to present business license(s) for



itself and its subs at the time of execution of the contract by the Contractor may, at the sole option of the Authority, be grounds to rescind the Contract award and consider the Contract void.

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, 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. 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 response to Request for Proposal attached hereto as Exhibit "A".

9. BOND REQUIREMENTS: Contractor shall obtain a performance bond and payment bond 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 option 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.

10. LIQUIDATED DAMAGES: The Authority may assess liquidated damages solely for Contractor's delay in performing the Work. 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 dated April 7, 2019, incorporated by reference herein as Appendix "A". The Contractor and his sureties shall be liable to the Authority and shall be assessed liquidated damages in the amount of Five Hundred and Forty Dollars (\$540.00) a day subject to a maximum of liquidated damages not to exceed Fifteen percent (15%) of the total consideration stated herein. Liquidated damage shall be the sole remedy for delay damages.

The Authority reserves the right under this clause to forego its claim for liquidated damages for delays and to sue for actual damages incurred as a result of such delays.

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 attorneys of the Authority fees in connection with any action taken by the regulator in this matter.

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
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.

13. 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, Mechanical Engineer
Project Management
V.I. Water and Power Authority
St. Thomas, VI 00804
Ofc: (340) 773-2250, ext.3117
Cell: (340) 227-6226
denika.charles@viwapa.vi

The Contractor designates the following:

Todd Patrick Jung, Project Manager
P. O Box 5307
Sunny Isles Station
St. Croix, USVI 00823
(340) 778 8587

14. 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.

15. 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.

16. 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 dated April 14, 2019, incorporated by reference herein as Appendix "A". A copy of the insurance certificate must be presented to the Authority's Contracting Officer upon contract execution, failing which the contract award may be rescinded.

17. INDEMNIFICATION: If the Authority is entitled to indemnification under this Agreement and if 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.

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

- i) The Authority's General Contract Terms dated April 7, 2019, incorporated by reference herein as Appendix "A"
- vi) The Authority's Request for Proposal, PR-17-20, incorporated by reference herein as Appendix "B";



- vii) The Authority's Addendum I and cover letter dated March 11, 2020, incorporated by reference herein as Appendix "C";
- viii) The Authority's Addendum II incorporated by referenced herein as Appendix "D";
- ix) Contractor's response to the Authority's Request for Proposal, dated March 13, 2020, incorporated by reference herein as Exhibit "A."

In the event of any conflict among the documents, the provisions of this Contract shall govern, then the provisions of the document first listed above in descending order.

19. 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.

20. 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 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 construction contract or any subcontract and that the contractor or subcontractor shall promptly reimburse the Virgin Islands Water & Power Authority for any payment(s) heretofore made.



21. 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.

22. GENERAL CONTRACT TERMS: This Contract is subject to the Authority's General Contract Terms attached hereto and made a part hereof as Appendix "A". The following provisions of the Authority's General Contract Terms are modified as indicated:

- Clause 1 – Definitions – Include the term "Engineer" shall mean the owner of the work, the Virgin Islands Water and Power Authority, or an authorized agent.
- Clause 10 – Changes – Insert the following after the work "changed" at the end of sentence No. 5 "The Authority reserves the right to remove any one of the bid items from the scope of work for the exact value noted in the bid schedule throughout the duration of the project if necessary."
- Exhibit A Insurance (attached to the General Contract Terms):
 1. Section C (1) – Strike Builder's Risk provision
 2. Section D (2) – Change "60 days" to "30 days"

23. 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.

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 extend 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 personally delivered, 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

The Contractor: Robert Schierloh
President
Virgin Islands Paving INC.
P. O. Box 4720
Kingshill, VI 00851

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. **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.

VIRGIN ISLANDS PAVING INC.



WITNESS



ROBERT SCHIERLOH
President

V.I. WATER AND POWER AUTHORITY



WITNESS



LAWRENCE J. KUPFER
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

 5/13/2020

LORELEI FARRINGTON
General Counsel
Attachments

