



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 BARKLEY TECHNOLOGIES, INC.**

SC-26-21

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 Contract is entered into this 23 day of February, 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 Barkley Technologies, Inc. (hereinafter called the "Contractor") at mailing address 42 King Crescent, Huntsville, Ontario Canada P1H 1X6, in which the Contractor shall provide project management and design services for the Authority on the islands of St. Thomas, St. Croix, and St. John. 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 Scope of Work set forth herein shall hereinafter

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be referred to as (the "Work"). The Contractor shall provide project management, design services, vegetation management, and material and field support for the installation of approximately 6,000 composite poles for the Authority's distribution feeders on the islands of St. Thomas, St. Croix, and St. John. The Work shall consist of the following as indicated below:

- Development of Project Phasing
- Development of Project Scheduling and Coordination
- Assist with scheduling, staging, verification, and charging out
- Perform non-Linear structural analysis on all pole designs
- Perform non-Linear analysis on all guying and anchoring designs
- Develop revised pole and anchor drawings as required
- Make revisions and update GIS as required
- Develop guying strategy for each pole
- Develop vegetation analysis results map books
- Develop and maintain dashboard for Vegetation Management.

The Work according to the Authority's Request for Proposal (PR-01-21) 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",
2. The Authority's RFP PR-01-21 and cover letter dated August 4, 2020. This document is attached hereto and incorporated by reference herein as Appendix "B",
3. The RFP PR-01-21, Addendum I dated August 28, 2020. This document is attached hereto and incorporated by reference herein as Appendix "C",

4. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "D",
5. The Contractor's Proposal to perform the Work and schedule received on September 4, 2020, and incorporated by reference herein as Exhibit "A"; and
6. HUD General Provisions ("HUD Rider") attached hereto and incorporated by reference herein as Exhibit "B" of Appendix "A".

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"). Once the scope of work has commenced based on the dates included in the notice to proceed, the work shall not surpass the effective termination date of the contract, which is two (2) years from the effective date as outlined in the notice to proceed.

3. **CONSIDERATION:** In consideration of the Contractor's performance of the Work, the Authority shall pay to Contractor the amount not to exceed THREE MILLION, ONE HUNDRED FORTY-FIVE THOUSAND, SEVEN HUNDRED FORTY-FIVE DOLLARS and 40/100 (\$3,145,745.40). 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 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 PAYMENT: The Contractor shall submit itemized and duly certified bi-weekly invoices to the Authority. Invoices should also be submitted to the Grants Management Department at grantsmanagement@viwapa.vi. All invoices will show the following: If unit pricing applies, a description of the services performed at the unit pricing. If time and material pricing: detailed labor and equipment hours billing. Labor billing will show employee name, classification, billing code (if applicable), hourly rate, and hours worked. Equipment billing will show equipment description, billing code (if applicable), hourly billing rate, and hours worked. The Authority will not be responsible for charges for idle equipment. All invoices will be broken down by customer work order number, where applicable.

Payments shall be made on a progress billing and payment method, after review and approval by the Authority's Project Coordinator. All invoices will be submitted bi-weekly. Payment terms are Net 90 days after the invoice date and the receipt of a Certificate of Acceptance by the Authority, the receipt of said Certificate of Acceptance shall not be unreasonably withheld or delayed and to be issued no later than 14 days of Contractor's submission of its invoice.

The Authority shall NOT have any obligation to pay, or see to the payment of,

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money to Subcontractors, except as may otherwise be required by law.

5. GROSS RECEIPT TAXES: Title 33, Section 44 of the Virgin Islands Code, as amended, requires the Authority when making a payment under this 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 ONE HUNDRED FIFTY-SEVEN THOUSAND TWO HUNDRED EIGHTY-SEVEN and 27/100 (\$157,287.27). 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 licenses and present copies of its licenses and those of its subcontractors to the Authority at contract execution. Failure of the Contractor to present copies of its licenses shall be grounds to consider the Contract as void.

7. 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, the 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 "D". 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 the attached form, which form 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.

8. 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 Professional General Contract Terms with Federal Requirements dated March 14, 2019. A copy of the insurance certificate adding the Authority as a certificate holder and additional insured must be

presented to the Authority's Contracting officer at contract execution.

9. HUD RIDER: This Contract is subject to the HUD Rider attached hereto and made a part hereof as Exhibit "B" of Appendix A and which is revised by mutual agreement of the Parties as follows:

Clause 30 subsection B- remove the word no from "are under no contractual"

Clause 30 subsection E- insert "not subject to IBEW collective bargaining agreement" after "vacant employment positions"

10. 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:

Cordell Jacobs
Project Coordinator
V.I. Water & Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804-1450
cordell.jacobs@viwapa.vi
340-774-3552

The Contractor designates the following individual in the following capacity:

Tim Bell
President
Barkley Technologies, Inc.
42 King Crescent
Huntsville, Ontario
Canada P1H 1X6
timbell@barkleytech.ca
705-789-7824

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

12. LIABILITY OF OTHERS: Nothing in this Contract shall be construed to impose any liability against the Authority to persons, firms, associations, or

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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.

13. 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 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. The Authority's RFP PR-01-21 and cover letter dated August 4, 2020. This document is attached hereto and incorporated by reference herein as Appendix "B",
3. The Authority's RFP PR-01-21, Addendum I dated August 28, 2020. This document is attached hereto and incorporated by reference herein as Appendix "C",
4. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "D",
5. The Contractor's Proposal to perform the Work and schedule received on September 4, 2020, and incorporated by reference herein as Exhibit "A"; and
6. HUD General Provisions ("HUD Rider") attached hereto and incorporated by reference herein as Exhibit "B" of Appendix 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 Professional General Contract Terms

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with Federal Requirements; (3) the Authority's Request for Proposal and its Addenda thereto attached, and (4) the Contractor's response. The Contract and Contract documents constitute the entire agreement between the Parties.

14. 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.

15. 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.

16. 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.

17. PROFESSIONAL GENERAL CONTRACT TERMS: This Contract is subject to the Authority Professional General Contract Terms with Federal

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Requirements dated March 14, 2019 attached hereto and made a part of this Contract as Appendix "A."

18. 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 e-mail and 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

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

The Contractor: Tim Bell
President
Barkley Technologies, Inc.
42 King Crescent
Huntsville, Ontario
Canada P1H 1X6
timbell@barkleytech.ca
705-789-7824

19. 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.

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20. 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 13: Contract Documents (Order of Precedence)
- Clause 15: Governing Law

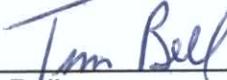
21. ENTIRE AGREEMENT: This Contract and the Contract Documents constitute the entire agreement of the Parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.

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



WITNESS

BARKLEY TECHNOLOGIES, INC.

By:  Dec 14, 2020

Tim Bell Date
President



WITNESS

V.I. WATER AND POWER AUTHORITY

By:  2/23/2021

Lawrence J. Kupfer Date
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:



Sharnelle M. Samuel, Esq. 12/07/2020
Acting General Counsel Date

Attachments

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