



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 J. BENTON CONSTRUCTION, LLC**

Contract No. SC-04-25

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

This Agreement (hereinafter "the Contract") is entered into this 19 day of December, 2024 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 **J. BENTON CONSTRUCTION, LLC** (hereinafter called the "Contractor") at mailing 3000 Orange Grove, Christiansted, U.S. Virgin Islands 00820, for the installation of primary and secondary work for Phase 1 of the Underground Electrical Construction Project: Feeder 9B, Queen Mary Highway on St. Croix, U.S. Virgin Islands.

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 be referred to as the "Work". The Contractor shall provide and perform, the Underground Electrical Construction Project on Queen Mary Highway, Phase 1 (Feeder 9B) from Industrial Road to the Eddie Ortiz Drive, St. Croix U.S. Virgin Islands. The Contractor

53

shall furnish all materials, labor, tools, supervision, and equipment necessary for this project. The Work shall be performed in accordance with the requirements contained in the following documents:

1. The Authority's General Contract Terms with Federal Requirements and the Authority's Basic Insurance Requirements dated March 14, 2019, attached hereto and incorporated by reference herein as Appendix "A";
2. The Authority's Request for the Proposal (PR-05-24) attached hereto and incorporated by reference herein as Appendix "B";
3. The Authority's Request for Proposal's (PR-05-24) Addendum I attached hereto and incorporated by reference herein as Appendix "C";
4. The Authority's Request for Proposal's (PR-05-24) Addendum II attached hereto and incorporated by reference herein as Appendix "D";
5. The Authority's Request for Proposal's (PR-05-24) Addendum III attached hereto and incorporated by reference herein as Appendix "E";
6. The Authority's Request for Proposal's (PR-05-24) Addendum IV attached hereto and incorporated by reference herein as Appendix "F";
7. The Authority's Request for Proposal's (PR-05-24) Addendum V attached hereto and incorporated by reference herein as Appendix "G";
8. The Authority's Request for Proposal's (PR-05-24) Addendum VI attached hereto and incorporated by reference herein as Appendix "H";
9. The Authority's Request for Proposal's (PR-05-24) Addendum VII attached hereto and incorporated by reference herein as Appendix "I";
10. The Contractor's Proposal, dated May 7, 2024, attached hereto and incorporated by reference herein as Exhibit "I";

2.TERM: This Contract shall take effect 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 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 one-year (365) days from the effective date in the Notice to Proceed.

3.CONSIDERATION: In consideration of the Contractor's performance of the Work, the Authority shall pay the Contractor the sum of **Ten Million Eight Hundred Ninety-Nine Thousand Three Hundred Twenty-Five Dollars and 24/100 (\$10,899,325.24)**. The Contractor shall charge the Authority for the Work in accordance with the Payment Schedule as indicated in Section 4 of this Contract.

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. Payments under this Contract will be made from federal funds obtained for the Authority's disaster recovery. The Contractor will be responsible for compliance with all federal requirements on these funds. Invoicing shall be submitted upon completion of milestones met. All invoices will be based upon a thirty (30) day payment term of approval. Payments shall be made on a progress billing and payment method, after review and signature approval by the Authority's Project Manager, in accordance

with the below payment schedule:

GENERAL

Mobilization	(3%)	\$326,979.76
Mitigation & Control Measures Complete (Storm Water, Sediment & Erosion, Dust, Noise/Vibration Control, Landscaping & Tree Protection, Etc.)	(1%)	\$108,993.25
Traffic Control	(2%)	\$217,986.50
Specialty Consulting Svc. (Arborist, Archaeologist, Land Surveyor/ Civil Engineer/SUE Engineer	(2%)	\$217,986.50
Project Cleanup/Punchlist/Demobilization/Contract Closeout Complete	(10%)	\$1,089,932.52
Subtotal (GENERAL)		<u>\$1,961,878.54</u>

CIVIL WORK

Primary & Communications Duct Banks Installed/Secondary Conduits Installed, Including Street Lights Conduits	(20%)	\$2,179,865.05
Manhole & Handholes Installed	(10%)	\$1,089,932.52
Concrete Equipment Pads & Bollards Installed	(9%)	\$980,939.27
Road Restoration & Roadway Striping/Marking Complete, Curbs/ Side Walks Repaired	(10%)	\$1,089,932.52
Rock Excavation (Refer to Definition of Rock in Contract Specs.)	(1%)	\$108,993.25
Subtotal (CIVIL WORK)		<u>\$5,449,662.62</u>

ELECTRICAL WORK

Pad Mounted Electrical Equipment Installed	(10%)	\$1,089,932.52
Grounding & Bonding Complete	(2%)	\$217,986.50
Medium Voltage Cables Pulled/Installed	(10%)	\$1,089,932.52
Manhole Accessories & Medium Voltage Cable Accessories Installed/Terminated	(5%)	\$544,966.26
Low Voltage Wiring, Connectors, Street Lights & Fiber	(3%)	\$326,979.76
Electrical Acceptance Testing Complete & Feeder Energized	(2%)	\$217,986.50
Subtotal (ELECTRICAL WORK)		<u>\$3,487,784.08</u>

CONTRACT TOTAL COST \$10,899,325.24

***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 the Authority when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law pursuant to 33 V.I.C. § 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 V.I.C. §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 **\$544,966.26**. The Authority shall not be responsible in any manner for the 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 the Work shall obtain all necessary and applicable business license(s) and present copies to the Authority at the time of contract execution. Failure to present copies of license(s) shall be grounds to consider the Contract as void or the Authority may terminate this agreement if the Contractor is provided additional time to secure its license and fails to do so in a timely manner.

7.EMPLOYMENT OF U.S. VIRGIN ISLANDS RESIDENTS: The Contractor shall comply with 24 V.I.C. § 126, which requires the following preference for resident workers (i.e., any person capable of performing services or labor and who is a citizen of the United

States, or an immigrant alien admitted to the United States for permanent residence under the provision of the Immigration and Nationality Act as amended):

Resident workers shall be given preference in employment in the Virgin Islands in any industry or occupation for which such workers are qualified and available. Non-resident workers shall be employed only to supplement the labor force of available and qualified workers. No resident worker shall suffer any reduction in workweek below 40 hours a week by reason of an employer employing a non-resident worker. No employer shall employ a non-resident worker except in strict accordance with the provisions of this chapter and regulations hereunder. Nothing contained herein shall be construed to interfere with the policy of the Employment Services in canvassing of affiliated state employment services to obtain workers before issuing clearance certification for alien workers.

The Contractor shall comply with the requirements of 31 V.I.C. §§ 271 and 272 and Title 24, Chapter 6 (Protection of Resident Workers) of the Virgin Islands Code and hire Virgin Islands Residents and Resident Workers for work in connection with this Contract. The Contractor shall also ensure that its subcontractor(s) comply with the legal requirement to hire Virgin Islands Residents and Resident Workers in connection with this project and shall require such in their contract(s) with their subcontractor(s). Upon request of the Authority, the Contractor shall provide a report and/or information regarding its compliance, and its subcontractor's compliance, with the requirement to hire Virgin Islands Residents and Resident Workers. Before any vacancies are filled with an individual that is not a resident of the Virgin Islands, the Contractor and its subcontractor(s) shall notify the Employment Security Agency of the Virgin Islands Department of Labor in accordance with the requirements of 31 V.I.C. § 272 and 27 V.I.C. § 303b.

The Contractor understands that its failure to adhere to the requirements referenced herein may result in the application of penalties as imposed by the

Department of Labor as outlined under 31 V.I.C. § 272(c)(d). Additionally, the Contractor's failure to comply with the requirements herein may result in the termination of this agreement in accordance with the Authority's General Contract Terms attached and incorporated by reference herein as Appendix "A." Further, the Authority shall consider Contractor's non-compliance with the provisions of this section in the award of future contracts.

8.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, the Contractor and its subcontractors performing services under this Contract and 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.

9.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 Proposal attached hereto as Exhibit "A".

10.BOND REQUIREMENTS: The Contractor shall obtain a performance bond and payment bond, each 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 the Contractor to present its performance bond and payment bond upon contract execution may, at the sole discretion of the Authority, be grounds to rescind the contract award. If the 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 case the Contractor shall be entitled to a cost adjustment for the cost of increasing the bond.

11.OWNERSHIP AND USE OF DOCUMENTS: All documents and data, written or otherwise generated by Contractor under the Contract including original drawings, estimates, reports, specifications, calculations, field notes, data, etc., and work product are to become the property of and shall be delivered to the Authority. Contractor shall retain one reproducible copy of these documents generated by the Contractor.

12.FORCE MAJEURE: Notwithstanding anything to the contrary contained herein, Contractor shall not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terroristic acts, pandemics, war, or civil unrest.

13.LIQUIDATED DAMAGES: The Authority may assess liquidated damages solely for the 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 March 14, 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 One Thousand Dollars and 00/100 (\$1,000.00) a day subject to a maximum of liquidated damages not to exceed fifteen percent (15%) of the total consideration stated herein. Liquidated damages 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.

14.ENVIRONMENTAL RESPONSIBILITY: The Contractor shall, in the performance of the 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 attorney's fees of the Authority in connection with any action taken by the regulator in this matter.

15.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 Manufacturers Association
RCRA	Resource Conversation and Recovery Act
TSCA	Toxic Substance and Control Act
DOT	Department of Transportation
ASTM	American Society of Testing Materials
AGMA	American Generator Manufacturers Association
NESC	National Electric Safety Code
AWWA	American Water Works Association
NSF	National Sanitation Foundation
FP-96	Federal Highway Administration

The Contractor shall also comply with any and all applicable U.S. Virgin Islands' building, plumbing, mechanical, electrical, fire, health, and public safety codes.

16.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 as its Project Manager:

Orville James
Project Manager
V.I. Water and Power Authority
St. Thomas, VI 00804
Cell: (340) 773-2250 extension 3068
orville.james@viwapa.vi

The Contractor designates the following:

James Benton
President
J. Benton Construction, LLC
3000 Orange Grove
Christiansted, VI 00803
Cell: (340) 718-7222

jbenton@jbcvi.com

17.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.

18.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 the Contractor of whatsoever nature, including but not limited to employment insurance and social security taxes for the Contractor, its servants, agents, employees, or independent contractors.

19.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 General Contract Terms with Federal Requirements dated March 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.

20.INDEMNIFICATION: If the Authority is entitled to indemnification under this Contract 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 the Contractor shall upon demand promptly reimburse the Authority for all defenses

and settlement costs.

21.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 General Contract Terms with Federal Requirements and the Authority’s Basic Insurance Requirements dated March 14, 2019, attached hereto and incorporated by reference herein as Appendix “A”;
2. The Authority’s Request for the Proposal (PR-05-24) attached hereto and incorporated by reference herein as Appendix “B”;
3. The Authority’s Request for Proposal’s (PR-05-24) Addendum I attached hereto and incorporated by reference herein as Appendix “C”;
4. The Authority’s Request for Proposal’s (PR-05-24) Addendum II attached hereto and incorporated by reference herein as Appendix “D”;
5. The Authority’s Request for Proposal’s (PR-05-24) Addendum III attached hereto and incorporated by reference herein as Appendix “E”;
6. The Authority’s Request for Proposal’s (PR-05-24) Addendum IV attached hereto and incorporated by reference herein as Appendix “F”;
7. The Authority’s Request for Proposal’s (PR-05-24) Addendum V attached hereto and incorporated by reference herein as Appendix “G”;
8. The Authority’s Request for Proposal’s (PR-05-24) Addendum VI attached hereto and incorporated by reference herein as Appendix “H”;
9. The Authority’s Request for Proposal’s (PR-05-24) Addendum VII attached hereto and incorporated by reference herein as Appendix “I”;
10. The Contractor’s Proposal, dated May 7, 2024, attached hereto and incorporated by reference herein as Exhibit “I”;

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.

22.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.

23.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.

24.GENERAL CONTRACT TERMS: This Contract is subject to the Authority's General Contract Terms with Federal Requirements attached hereto and made a part hereof as Appendix "A".

25.GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the United States Virgin Islands without regard to applicable principles of conflicts of law.

26.VENUE: 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 Parties further agrees that process may be served upon them in any manner authorized by the laws of the United States Virgin Islands for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction and such process.

27.ORDER OF PRECEDENCE: In the event of any conflicts or inconsistencies between the written Agreement and the attachments comprising the Contract, such conflict will be resolved according to the following descending order of precedence: (1) This Contract; (2) The Authority's General Contract Terms; (3) Authority's Request for Proposal (PR-05-24) with all Addendums I-VIII; (4) Contractor's Proposal Response;

28.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.

29.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: Karl Knight
Executive Director
V. I. Water and Power Authority
P. O. Box 1450
St. Thomas, U.S. Virgin Islands 00804
karl.knight@viwapa.vi

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: James Benton
President
J. Benton Construction, LLC
3000 Orange Grove
Christiansted, VI 00820
jbenton@jbcvi.com

30.COUNTERPARTS: This Contract 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.

31.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 20: Indemnification
- Clause 21: Contract Documents
- Clause 25: Governing Law


32.SEVERABILITY CLAUSE: Should any provision of this Contract be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.


33.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.

J. BENTON CONSTRUCTION LLC


WITNESS



JAMES BENTON
President

V.I. WATER AND POWER AUTHORITY


WITNESS


KARL KNIGHT
Executive Director

APPROVED AS TO LEGAL SUFFICIENCY:


10/22/2024
PATRICIA QUINLAND
Assistant General Counsel
Attachments