




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 WEST PEAK ENERGY, LLC**

**Contract No. SC-05-23**

**The within 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 11<sup>th</sup>  day of October 2022, by and between WEST PEAK ENERGY, LLC (hereinafter called the "Contractor"), located at 155 E. Boardwalk Dr. Ste. 400, Fort Collins, Colorado 80525 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 project management services for the installation of the new Reciprocating Internal Combustion Engines (RICE) units and the Battery Energy Storage Systems (BESS) in the US Virgin Islands on behalf of the Authority. The Contractor and the Authority shall hereinafter be referred to collectively 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 be referred to as the "Work". The Contractor shall provide project management services during the installation of the new Reciprocating Internal Combustion Engines (RICE) units and the Battery Energy Storage System (BESS) as outlined in the Authority's RFP PR-08-22 attached hereto and incorporated by reference herein as Appendix "C". Services shall include but are not limited to the following:

- An on-site full-time project manager and supporting team to assist with the following activities:
  - development of a Project Management Plan,
  - construction oversight,
  - scheduling,
  - daily/weekly/monthly reports,
  - development and tracking of Key Performance Indicator (KPI),
  - fiscal administration, and
  - assist with engineering/design review of project submittals.
- A Safety Officer and Quality Assurance/Quality Control (QA/QC) engineer will be supplied on a part time basis to:
  - conduct job audits for safety,
  - institute quality assurance and quality control measures as required and coordinated by the on-site project manager to ensure full compliance with all codes and regulations,
  - supply/support engineering reviews of design and field engineering for the RICE facilities and the BESS, including design reviews in the disciplines of civil engineering, structural engineering, mechanical engineering, electrical engineering, and instrumentation, in accordance with VIWAPA requirements, and
  - Ensure the Electric Power Control (EPC) Contractor complies with all specification's codes and all approved drawings in accordance with the project schedule and budget.

*Plus*

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";
2. HUD General Provisions "HUD RIDER" attached hereto and made a part hereof as Appendix "B";
3. The Authority's RFP PR-08-22 and cover letter dated September 2021. This document is attached hereto and incorporated by reference herein as Appendix "C";
4. The Authority's Addendum I to PR-08-22. This document is attached hereto and incorporated by reference herein as Appendix "D";
5. The Authority's Clarification I to PR-08-22. This document is attached hereto and incorporated by reference herein as Appendix "E";
6. The Contractor's Proposal dated November 9, 2021, and incorporated by reference herein as Exhibit "A";
7. The Contractor's Clarification I Response and incorporated by reference herein as Exhibit "B"; and
8. The Contractor's Amended Proposal with revised Budget and Proposal Form, incorporated by reference herein as Exhibit "C."

**2.TERM:** This Contract shall take effect upon its full and final execution by the Parties and issuance by the Authority of the written Notice to Proceed (hereinafter "Effective Date"). The Contract shall terminate twenty-four months 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 **Three Million Eight Hundred Eighty-Seven Thousand Four Hundred Sixty-Six Dollars and**



**95/100 (\$3,887,466.95)**, based on the various rates provided in Exhibits A and C (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.

**4.TERMS OF PAYMENT:** 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: \$36,368.00
- Invoices will be issued monthly (net 30)
- Demobilization: \$20,300.00

Invoicing shall be submitted monthly based on hourly work. All invoices will be based upon thirty (30) days payment terms in accordance with Section 12 of the Authority's Professional General Contract Terms with Federal Requirements, Appendix A, revised as follows:

Section 12(1) of the Professional General Contract Terms (Appendix A to the Contract) is deleted in its entirety and replaced by:

(1) Payments will be in accordance with the following:

- a. Progress payments will be made on a monthly basis. Contractor shall endeavor to submit its progress payment invoice by the 10th day of the month following the month for which work, services and expenses were incurred and are being invoiced.
- b. Progress payments will be made within thirty (30) days after the receipt by the Project Coordinator of an itemized and duly certified invoice issued by the Contractor based upon the completion of the Work performed in the month or other time period or work activity for which the invoice applies.
- c. Upon review and acceptance of the invoice amounts and supporting documents, the Project Coordinator shall promptly issue a Certificate of

*PR*

Acceptance that the amounts requested in the progress payment invoice are properly due and payable. If the Project Coordinator disputes any portion of the progress payment invoice or reasonably requires additional documentation within fifteen (15) days of receipt of the invoice, such disputed or undocumented portions of the progress payment invoice shall not be due and payable until the issues raised are resolved. All undisputed portions of each progress payment invoice shall be separately remitted and due and payable within 30 days of receipt of the properly itemized and certified invoice, notwithstanding any delays in HUD or other third-party review of the progress payment invoice.

- d. In the event the Authority is unable to make its payments of undisputed invoice amounts within thirty (30) days of receipt, Contractor may, at its election, suspend all or any portion of its work if late payments jeopardize Contractor's ability to perform the Work.
- e. Partial payments shall be subject to withholding of the Gross Receipts Tax due, which shall be paid promptly to the proper Virgin Islands tax authority. Authority shall provide Contractor with evidence of each such payment so Contractor can timely and properly file its monthly tax reports.
- f. All material and work covered by partial payments made shall thereupon become the sole property of the Authority, but the provisions shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Authority to require the fulfillment of all the terms of the Contract.

**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, 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 for the purposes of complying with Title 33, Section 44 of the Virgin Islands Code, the Authority shall withhold from each progress payment and forward to the V.I. Bureau of Internal Revenue the amount of gross receipt due based

on five percent (5%) of the portion of work performed within the Virgin Islands, or such amounts as required by any changes to Virgin Islands law. 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.

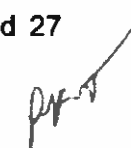
**6.BUSINESS LICENSE:** The Contractor and, if applicable, any of its sub-contractors must comply with all U.S. Virgin Islands licensing laws in connection with its business operations. The Contractor shall obtain all necessary and applicable business licenses and present copies of them to the Authority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

**7.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. Nonresident workers shall be employed only to supplement the labor force of available and qualified workers. No resident workers 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 requirements of 31 V.I.C. §§ 271 and 272 and Title 24, Chapter 6 (Protection of Resident Workers) 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.

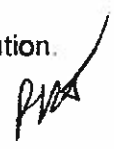


The Contractor understands that its failure to adhere to the requirements referenced herein may result in the application of penalties as imposed by the Department of Labor as outlined under 31 V.I.C. § 272(c)(d). Additionally, the Contractor's failure to comply with the requirements herein may result in 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 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 Exhibits A and C.

**10.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.

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**11.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 Clause 10 of the Authority's attached Professional General Contract Terms, the Contractor shall be liable to the Authority and shall be assessed liquidated damages in the amount of Five Hundred Dollars and 00/100 (\$500.00) a day subject to a maximum of liquidated damages not to exceed fifteen percent (15%) of the total consideration stated herein. Liquidated damages shall, at the Authority's discretion, be the sole remedy for delay damages.

**12.DESIGNATED PERSONNEL:** The Parties reserve the right to designate personnel to provide information and to coordinate the Work between the Parties.

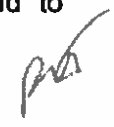
The Authority designates the following:

Chavante Marsh  
Project Manager  
V.I. Water & Power Authority  
P.O. Box 1450  
St. Thomas, U.S. Virgin Islands 00804-1450  
(340) 626-1397 (cellular)  
[chavante.marsh@viwapa.vi](mailto:chavante.marsh@viwapa.vi)

The Contractor designates the following:

Ivan Clark  
Executive Director  
West Peak Energy, LLC  
155 E. Boardwalk Dr. Suite 400  
Ft. Collins, CO 80525  
(303) 324-4552 (phone)  
[ivan@westpeakenergy.net](mailto:ivan@westpeakenergy.net)

**13.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.




**14.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.

**15.INDEPENDENT CONTRACTORS:** It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture, or agency. Neither Party shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.

**16.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, shortage of supply, labor difficulties, war, or civil unrest.

**17.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 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. 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";
3. The Authority's RFP PR-08-22 and cover letter dated September 2021. This document is attached hereto and incorporated by reference herein as Appendix "C";
4. The Authority's Addendum I to PR-08-22. This document is attached hereto and incorporated by reference herein as Appendix "D";
5. The Authority's Clarification I to PR-08-22. This document is attached hereto and incorporated by reference herein as Appendix "E";
6. The Contractor's Proposal dated November 9, 2021, and incorporated by reference herein as Exhibit "A";
7. The Contractor's Clarification I Response and incorporated by reference herein as Exhibit "B"; and
8. The Contractor's Amended Proposal with revised Budget and Proposal Form, incorporated by reference herein as Exhibit "C."

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

**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.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.

**21.HUD RIDER:** This Contract is subject to the HUD Rider attached hereto and made a part hereof as Appendix "B".

**22.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 a court of competent jurisdiction in the United States Virgin Islands.

**23.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.

**24.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."

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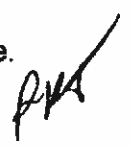
**25.NOTICE:** Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid, or personally delivered, addressed to the Parties as follows:

The Authority: Andrew L. Smith  
Executive Director (CEO)  
V.I. Water & Power Authority  
P.O. Box 1450  
St. Thomas, U.S. Virgin Islands 00804  
Andrew.smith@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: Paul Trygstad, President  
West Peak Energy, LLC  
155 E. Boardwalk Dr. Ste. 400  
Ft. Collins, CO 80525  
paul@westpeakenergy.net

**26.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 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.



Contractor understands that the Authority will not release any funds until Contractor's SAMs number has been provided to the Authority and the Authority has verified Contractor's debarment status.

**27.NO CONVICTION:** Contractor affirms that Contractor, its directors and/or its principals have not been convicted of a federal criminal violation within the past 24 months and that Contractor does not have unpaid federal tax liability.

**28.WARNING:** Contractor understands that any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

**29.CONFIDENTIALITY AND NON-DISCLOSURE:** Contractor agrees that any information provided to Contractor by the Authority of a confidential nature will not be revealed or disclosed to any person or entity, except in the performance of this Agreement or as directed by legal or regulatory authority, without the express consent of the Authority.

**30. ASSIGNMENT OF RIGHTS:** Contractor may not assign its rights under this Agreement to any party without the prior written consent of the Authority.

**31. TERMINATION FOR BANKRUPTCY.** In the event that either Party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof, then the other Party may terminate this Agreement effective immediately upon written notice to such Party.

**32.COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original and the same

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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.

**33.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 17: Indemnification
- Clause 18: Contract Documents
- Clause 23: Governing Law

**34.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.

**35.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.



*SIGNATURE PAGE TO FOLLOW*

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



WITNESS

**WEST PEAK ENERGY, LLC**



PAUL TRYGSTAD  
President

**V.I. WATER & POWER AUTHORITY**




WITNESS



ANDREW L. SMITH  
Executive Director (CEO)

**APPROVED AS TO LEGAL SUFFICIENCY:**



DIONNE G. SINCLAIR  
General Counsel

Attachments