



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 ABB, INC.**

**Contract No. SC-05-24**

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

This Agreement (hereinafter "the Contract") is entered into this 2nd day of October, 2023 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 ABB, INC. (hereinafter called the "Contractor") at mailing address 305 Gregson Drive, Cary, NC 27511, for the repair, oil purification and re- testing of the Virgin Islands Water and Power Authority East End Substation Power Transformer (Serial No. A1472T). The Authority and Contractor are sometimes referred to herein individually as a "Party" and together 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, upon notification of the Authority, the repair, oil purification and re-testing of the Virgin Islands Water and Power Authority East End Substation Power Transformer (Serial No. A1472T). This transformer has been

out of service since 2017. The East End Substation power transformer is a 3-phase, 60 Hz, Magnetek Transformer with a load tap changer unit on it, in a separate compartment from the main tank which is pressurized by an ABB inert gas system. This will include replacing the necessary meters, relays, cables, testing and commissioning and the installation of a station service transformer, St. Thomas, US Virgin Islands as outlined in the Contractor's Quotation dated July 26, 2023, attached hereto and incorporated by reference herein as Exhibit "A".

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 revised October 16, 2023, attached hereto and incorporated by reference herein as Appendix "A";
2. HUD General Provisions ("HUD Rider") attached hereto and incorporated by reference herein as Appendix "B";
3. The Contractor's Quotation, dated July 26, 2023, attached hereto and incorporated by reference herein as Exhibit "A";

The Contractor shall perform the Work in accordance with its Contractor's Quotation 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 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 Work has commenced based on the dates included in the Notice to Proceed, the work shall not surpass the termination date of the contract, which is four (4) months 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 a sum not to exceed One Million Seven Hundred Fifty-Six Thousand Four Hundred Twenty-Two Dollars and 00/100 (\$1,756,422.00). 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 Coordinator. Invoicing shall be submitted upon completion of milestones met for each Phase. 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 approval by the Authority's Project Coordinator, in accordance with the below payment schedule:

20% Upon Issuance of Contract	\$351,284.40
20% Upon the Submittal of the Project Schedule	\$351,284.40
20% Upon the Shipping of Project Equipment	\$351,284.40
20% Upon Mobilization	\$351,284.40
20% Upon Project Completion Report	\$351,284.40

<b>Total Contract Consideration</b>	<b><u>\$1,756,422.00</u></b>
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**\*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 \$87,821.10. 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 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. 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 the Contractor's Quotation 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. 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. In accordance with Section 37j of the attached General Contract Terms with Federal Requirements, the Contractor shall indemnify the Authority relating to any Hazardous Materials improperly handled or disposed of by 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, shortage of supply, labor difficulties, war, or civil unrest.

**13. 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.

**14. 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 Coordinator:

Chavante Marsh  
Project Coordinator  
V.I. Water and Power Authority  
St. Thomas, VI 00804  
Telephone (340) 774-3552 extension 2278  
[chavante.marsh@viwapa.vi](mailto:chavante.marsh@viwapa.vi)

The Contractor designates the following:

Brandon Lloyd, Project Manager  
Electrification Service-ELSE Central America  
and Caribe  
(919) 307-9612  
[brandon.lloyd@us.abb.com](mailto:brandon.lloyd@us.abb.com)

**15. 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.

**16. 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.

**17. 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 dated October 16, 2023, 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.

**18. INDEMNIFICATION:** If the Authority is entitled to indemnification in accordance with Section 23 of the attached General Contract Terms with Federal Requirements 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.

**19. 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.

**20. 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 revised October 16, 2023, attached hereto and incorporated by reference herein as Appendix "A";
2. HUD General Provisions ("HUD Rider") attached hereto and incorporated by reference herein as Appendix "B";

3. The Contractor's Quotation, dated July 26, 2023, attached hereto and 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.

**21. 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.

**22. COMPLIANCE WITH OTHER LAWS:** The Parties to this agreement shall comply with all applicable laws, rules, regulations and public policies that prohibit unethical conduct regarding the obtaining, retention or conduct of business or an unfair advantage ("Laws"). The Parties shall not directly or indirectly give, offer, promise, authorize, or allow to be given, offered, or promised, anything of value to an official or employee of any government, state-owned enterprise, international organization including subdivisions thereof or entities acting on behalf of a government, state-owned enterprise, international organization or subdivision thereof (any such employee or official referred to collectively as "Official"), while knowing or having reason to know that such thing of value is to be given, offered, or promised to an Official (including political parties or officials thereof or candidates for foreign office) in order to: (i) influence any officials thereof, or (ii) induce such Official to use this influence to affect or influence any act or decision of any government (or any subdivision thereof), or (iii) assist the Parties in obtaining or retaining business, or in directing business to any person or obtain an unfair advantage for the Parties in any respect.

Should any Party violate any of the Laws then: (i) the other Party(s) shall have the right to immediately terminate the Agreement for cause; (ii) the other Party(s) shall have a right of action against the offending Party in breach of such laws; and (iii) the offending Party shall indemnify the other Party(s) for any penalty, loss or expenses incurred by the other Party(s) as a result of the offending Party's breach of any of its obligations under this Section.

**23. PRESENTATION OF COMPLIANCE WITH THE LAW:** The Parties hereto represent and warrant that this Contract and its performance do not violate any law, regulation, or policy of the United States Virgin Islands. Any Party hereto shall be relieved of its obligations to perform under this Contract to the extent such performance would violate any law, regulation, or policy of the United States.

**24. CONFLICT OF INTEREST:** The Contractor warrants and represents that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its obligations under the Contract. If any such actual or potential conflict of interest arises under this Contract, the Contractor shall immediately inform the Authority in writing of such conflict. If, in the reasonable judgment of the Authority, such conflict poses a material conflict to and with the performance of Contractor's obligations under this Contract then the Authority may terminate the Contract immediately upon written notice to Contractor; such termination of the Contract shall be effective upon the receipt of such notice by the Contractor.

**25. 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.

**26. GENERAL CONTRACT TERMS:** This Contract is subject to the Authority's General Contract Terms with Federal Requirements revised October 16, 2023 attached hereto and made a part hereof as Appendix "A".

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

**28. GOVERNING LAW:** The laws of the United States Virgin Islands shall govern the interpretation and construction of this Contract 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.

**29. 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.

**30. LIQUIDATED DAMAGES:** The Authority shall assess liquidated damages solely for delay in achieving contract completion. For each day that the project or any

component of the project extends beyond the specified contract completion date, for any cause other than excusable causes as defined in Paragraph 13a of the attached General Contract Terms with federal requirements revised October 16, 2023, the Contractor and its sureties shall be liable to the Authority and shall be assessed a liquidated damage in the amount of **\$500.00** per day subject to a maximum of liquidated damages not greater than **10%** of the total contract price.

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.

**31. 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 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.

**32. 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 and Power Authority  
P. O. Box 1450  
St. Thomas, U.S. Virgin Islands 00804  
[Andrew.smith@viwapa.vi](mailto: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](mailto:legaldepartment@viwapa.vi)

The Contractor: Michael Gray  
President  
ABB, Inc.  
305 Gregson Drive  
Cary, NC 27511  
[Michael.gray@pa.abb.com](mailto:Michael.gray@pa.abb.com)

**33. 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.

**34. 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 18: Indemnification
- Clause 20: Contract Documents
- Clause 28: Governing Law

**35. 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.

**36. CLERICAL ERRORS:** The Authority may correct clerical errors in this Contract, and any documents submitted with or under this agreement, by providing notice by email and a reasonable opportunity for Contractor to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the scope, product, quality or pricing.

**37. 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.

Andrew Loffredo  
WITNESS

**ABB, INC.**  
**Claiborne**  
**Hardeman**  
CLAIBORNE HARDEMAN DATE  
Region Director

Digitally signed by Claiborne  
Hardeman  
Date: 2023.10.17 15:02:21  
-04'00'

Robert Streett  
WITNESS

**Mark**  
**Hammes**  
Mark Hammes DATE  
VP Sales, US

Digitally signed by Mark Hammes  
DN: cn=Mark Hammes, c=CH,  
o=ABB Asea Brown Boveri Ltd,  
ou=US  
Date: 2023.10.17 15:24:10 -04'00'

**V.I. WATER AND POWER AUTHORITY**

Dionne G. Sinclair  
WITNESS

Andrew L. Smith  
ANDREW L. SMITH 10.18.2023  
Executive Director (CEO) DATE

APPROVED AS TO LEGAL SUFFICIENCY:

Dionne G. Sinclair  
DIONNE G. SINCLAIR, ESQ.  
General Counsel

Attachments