

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 KAMI METALS, LLC**

Contract No. SC-18-24

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

This Contract is entered into this 11th day of March, 2024 by and between KAMI METALS, LLC, (the "Contractor") located at 144 Thompson Ave., Mountain View, California 94043 and the VIRGIN ISLANDS WATER AND POWER AUTHORITY (the "Authority"), located at 9720 Estate Thomas, P.O. Box 1450, St. Thomas, USVI 00804, for the purpose of providing cleanup, disposal, and heavy equipment use to remediate oil released from Tank 11 at the Randolph Harley Power Plant and the adjacent Lindbergh Bay area.

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/WORK:** The Scope of Work set forth herein shall hereinafter be referred to as the "Work". Contractor shall provide cleanup, disposal, and heavy equipment use to remediate oil released from Tank 11 at the Randolph Harley Power Plant and the adjacent Lindbergh Bay area, for the Virgin Islands Water and Power Authority, as outlined in Contractor's Invoice dated December 18, 2023, attached hereto and made part hereof as Exhibit "I". The Work shall conform to the Authority's General

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Contract Terms attached hereto and made a part hereof and identified as Appendix "I". The Contractor shall provide labor and materials necessary to perform the work in accordance with the Scope of Work identified as Exhibit "I".

2. CONSIDERATION: In consideration of the Contractor's performance of the Work, the Authority shall pay to Contractor an amount not to exceed Three Million (\$3,000,000.00). The total consideration stated 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. The Authority shall not be responsible in any way for any taxes, customs, duties, excise, or other fees.

3. PAYMENT TERMS: All invoices shall be submitted electronically to the Project Coordinator. All invoices will be based upon a net 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

4. 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 October 30, 2024.

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

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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 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: Contractor must comply with all 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. INSURANCE: The Contractor shall, at its expense, before any Work is commenced, cause to be issued and maintained until sixty (60) days after acceptance of the Work, insurance as described in the Authority's General Contract Terms revised March 14, 2019. A copy of the insurance certificate must be presented to the Authority's Contracting officer upon contract execution, failing which the Authority may rescind the

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Contract award.

8. RELIANCE: The Contractor's representations of its ability to perform the Work with skilled and competent personnel are a substantial and material condition of this Contract. The Contractor agrees, or is otherwise aware, that the Authority shall rely on all the representations in its Proposal attached hereto as Exhibit "I".

9. HAZARDOUS WASTE CONTROL: The Contractor shall be responsible for

complying with all applicable Rules, Regulations and Guidelines issued by the U.S. Environmental Protection Agency (EPA), V.I. Department of Planning and Natural Resources (DPNR), and any other Federal, State or local regulatory agencies with regard to the discharge or spill of oil, petroleum products, lead or lead based products, to the discharge or spill of oil, petroleum products, lead or lead based products, and contaminated soil or other prohibited contaminants during the performance of the Work pursuant to this Contract. Contractor shall also become familiar with and adhere to the policies and practices of the Authority regarding the discharge or spill of oil, petroleum products, lead or lead based products, and contaminated soil and any other hazardous or solid waste which the Contractor shall be required to work with or dispose of in the performance of the Work. The Contractor shall not discharge paint or any oily products into the Authority's storm drains. The Contractor shall indemnify the Authority for any and all fines, assessed to the Authority as a result of the Contractor's failure to adhere to any CZM Permits, EPA, OSHA, DPNR, and Coast Guard's regulations and directives, and shall further pay all costs, expenses and attorney's fees, in connection therewith. Additionally, the Contractor shall indemnify the Authority for the cost of cleaning up oil spills and any other discharges.

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10. 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.

11. 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.

12. 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 "I"; 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 ten 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.

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13. ENVIRONMENTAL RESPONSIBILITY: The Contractor shall be responsible for complying with all applicable Rules, Regulations and Guidelines issued by the U.S. Environmental Protection Agency (EPA), V.I. Department of Planning and Natural Resources (DPNR), Department of Health, and any other Federal, State or local regulatory agencies with regard to the disposal of the solid waste and the discharge or spilling of oil, petroleum products, or other prohibited contaminants during the performance of the Work pursuant to this Contract. Contractor shall also become familiar with and adhere to the policies and practices of the Authority regarding the discharge or spilling of oil, petroleum products, etc.

The Contractor shall indemnify the Authority for any and all fines assessed to the Authority as a result of the Contractor's failure to adhere to local and federal regulations and directives, and shall further pay all costs, expenses and attorney's fees in connection therewith. Additionally, the Contractor shall indemnify the Authority for the cost of cleaning up oil spills and any other discharges.

14. SAFETY PRECAUTIONS: Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the Work. In addition, the Contractor shall ensure that the equipment and materials furnished, including the final installation, are in strict compliance with any and/or all of the applicable codes and standards listed below:

- a. AMCA - Air Movement and Control Association
- b. API - American Petroleum Institute
- c. DPNR - Department of Planning & Natural

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- d. OSHA - Occupational Safety and Health Administration
- e. DOT - Department of Transportation
- f. ANSI - American National Standards Institute
- g. NFPA - National Fire Protection Association
- h. UFC - Uniform Fire Code
- i. EPA - Environmental Protection Agency
- j. Virgin Islands Fire, Health and Public Safety Codes

15. DESIGNATED PERSONNEL: The Authority reserves the right to designate personnel to provide information and to coordinate the Work with the Contractor. The Authority designates the following individual in the following capacity:

Maxwell George
Project Coordinator
V.I. Water and Power Authority
P. O. Box 1450
St. Thomas, VI 00804
(340) 774-3552, ext. 2240

The Contractor designates the following individual in the following capacity:

Santosh Walker
President
Kami Metals, LLC
144 Thompson Ave.
Mountain View, CA 94043
(415) 601-7136

16. CHANGE ORDERS: All change orders or requests for additional services must be approved in writing by the Authority's Contracting Officer. In the absence of such

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written approval, Contractor shall be liable for any changes in the Work not in conformance with this Contract.

17. CONTRACT DOCUMENTS: Contractor shall complete Work to be performed in accordance with the Contract documents. The Contract Documents include:

1. The Authority's General Contract Terms with the Authority's Basic Insurance Requirements dated March 14, 2019, attached hereto and identified as Appendix "I"; and
2. The Contractor's Invoice dated December 18, 2023, attached hereto and identified as Exhibit "I".

In the event of any conflict, the terms of this Contract will govern over the provisions of any documents referenced herein. This Contract and Contract Documents constitute the entire agreement between the parties hereto, and all prior understandings or communication, written or oral, with respect to the subject matter of this Contract are merged herein.

18. 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

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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.

19. PRESENTATION OF COMPLIANCE WITH LAW: The Parties hereto represent and warrant that this Agreement 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 Agreement to the extent such performance would violate any law, regulation or policy of the United States.

20. 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.

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

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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.

22. 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.

23. 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.

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 "I".

25. 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

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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.

26. GOVERNING LAW: The laws of the 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.

27. 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.

28. 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; and (3) Contractor Document.

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 electronic mail and receipt is acknowledged, or certified mail, postage prepaid, or personally delivered, addressed to the

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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@viwapavi.vi

The Contractor: Santosh Walker
President
Kami Metals, LLC
144 Thompson Ave.
Mountain View, CA 94043
kamimetals@gmail.com

30. 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.

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 2: Consideration
- Clause 17: Contract Documents

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- Clause 22: Indemnification
- Clause 26: 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. This Contract and the Contract Documents are separate and distinct from any other Contract held between the Parties. Failure to perform obligations due under this Contract due to the status of obligations on another held between the Parties shall constitute an unreasonable delay subject to remedies as outlined in Paragraph 12.

SIGNATURE PAGE TO FOLLOW

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

KAMI METALS, LLC


WITNESS


Santosh Walker
President

V.I. WATER & POWER AUTHORITY


WITNESS


Andrew L. Smith
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:


Dionne G. Sinclair
General Counsel

2-28-2024
Date

Attachments