

VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
ST. THOMAS, U.S. VIRGIN ISLANDS 00804-1450



**CONTRACT BETWEEN THE VIRGIN ISLANDS WATER AND POWER AUTHORITY
AND HAUGLAND VIRGIN ISLANDS**

SC-20-21

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

This Contract is entered into this 19 day of November, 2020, by and between the Virgin Islands Water and Power Authority (hereinafter the "Authority") at mailing address Post Office Box 1450, St. Thomas, U.S. Virgin Islands 00804 and HAUGLAND VIRGIN ISLANDS (hereinafter the "Contractor") located at 18A Estate Havensight, St. Thomas, VI 00803, to replace an estimated 1,500 wooden poles with composite poles on distribution feeders and complete other related work on the island of St. Thomas, U.S Virgin Islands. The Authority and the Contractor shall jointly be referred to as the "Parties".

WITNESSETH

In consideration of the mutual promises, covenants, and conditions contained herein the Parties hereto, intending to be legally bound, hereby agree as follows:

1. **SCOPE OF WORK:** The Contractor is responsible for the Scope of Work (hereinafter the "Work") in which the Contractor shall replace up to an estimated 750 wooden poles, that are not included in the St. Thomas Underground Project, in a section identified as St. Thomas "A" located on the western side of the island, as identified

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in the Authority's Request for Proposal PR-13-20, with composite poles on distribution feeders and complete other related work. Additionally, Contractor shall replace up to an estimated 750 wooden poles, that are not included in the St. Thomas Underground Project, in a section identified as St. Thomas "B" located on the eastern side of the island, as identified in the Authority's Request for Proposal PR-13-20, with composite poles on distribution feeders and complete other related work. 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 dated April 07, 2019. This document is attached hereto and incorporated by reference herein as Appendix "A",
2. The Authority's RFP PR-13-20 and cover letter dated November 22, 2019. This document is attached hereto and incorporated by reference herein as Appendix "B",
3. The Authority's Request for Proposal PR-13-20, Addendum I dated December 13, 2019. This document is attached hereto and incorporated by reference herein as Appendix "C",
4. The Authority's Composite Pole Installation Project Guidelines attached hereto and incorporated by reference herein as Appendix "D",
5. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "E",
6. The Contractor's Proposal to perform the Work and Schedule, received on December 19, 2019, and incorporated by reference herein as Exhibit "A"; and
7. HUD General Provisions ("HUD Rider") attached hereto and incorporated by reference herein as Exhibit B of Appendix "A."

No segment of work shall be commenced until the Contractor has obtained approved work packages from the Authority's Project Coordinator.


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2. TERM: This Contract shall take effect upon its full and final execution by the Parties and in accordance with the commencement date as agreed upon between the Parties as contained in the written Notice to Proceed (hereinafter "Effective Date"). Once the scope of work has commenced based on the dates included in the Notice to Proceed, the work shall not surpass the effective termination date of the contract, which is three (3) years 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 amount not to exceed Forty-Seven Million, Eight Hundred Seventeen Thousand, Nine Hundred Sixty-Five Dollars and 32/100 (\$47,817,965.32) (hereinafter the "Contract Price"). Payments shall be made on a progress billing and payment method, after review and approval by the Authority's Project Manager.

Payment of any taxes, duties, customs, excise or other fees shall be the sole responsibility of the Contractor. Unless otherwise authorized by law, the Authority shall not be responsible in any way for any taxes, customs, duties, excise or other fees. The Authority shall NOT have any obligation to directly pay, or see to the payment of, money to subcontractors, except as may otherwise be required by law.

The Parties recognize that the funds for the payment of the services performed for the Scope of Work are being provided by the Federal Emergency Management (Agency) under federal grant as payment to the Authority. To the extent unpaid to Contractor, the Authority hereby assigns and conveys rights, title and interest in reimbursement from FEMA for services provided by Contractor pursuant to this



agreement. The Parties acknowledge, however that the Authority's payment obligations are not limited to or conditioned upon the payment by FEMA.

4. TERMS OF PAYMENT: The Contractor shall submit itemized and duly certified invoices electronically to the Project Manager. Invoices should also be submitted to the Grants Management Department at grantsmanagement@viwapa.vi. All invoices will show the following: If unit pricing applies, a description of the services performed at the unit pricing. If time and material pricing: detailed labor and equipment hours billing. Labor billing will show employee name, classification, billing code (if applicable), hourly rate, and hours worked. Equipment billing will show equipment description, billing code (if applicable), hourly billing rate, and hours worked. The Authority will not be responsible for charges for idle equipment. All invoices will be broken down by customer work order number, where applicable.

All invoices must be submitted bi-weekly. Payment terms are Net 90 days after the invoice date and the receipt of a Certificate of Acceptance by the Authority, the receipt of said Certificate of Acceptance shall not be unreasonably withheld or delayed and to be issued no later than 14 days of the Contractor's submission of its invoice. No retainage will be withheld, and no liquidated damages will apply during this period.

5. GROSS RECEIPT TAXES: Title 33, Section 44 of the Virgin Islands Code, as amended, requires the Authority when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33 VIC Section 43(a) for each payment for Work performed in the Virgin Islands. Notwithstanding any other provisions of this contract to the contrary, it is agreed between the Parties that for the purposes of complying with Title 33, Section 44 of the Virgin

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Islands Code, the Authority shall withhold and forward to the Bureau of Internal Revenue the sum of or such amount as required by any changes to the law at 33 VIC Section 43(a). Despite the requirements under Title 33, Section 44, the Contractor agrees that calculation of gross receipts taxes shall be the sole responsibility of the Contractor. The amount of Gross Receipts to be withheld shall be \$2,390,898.27. The Authority shall not be responsible in any manner for miscalculation of the gross receipts due under this contract or for any additional assessments by the Bureau of Internal Revenue resulting from work performed under this contract.

In the event the Contract is amended, and the consideration herein increases, the appropriate amount of gross receipt taxes to reflect the increase in the consideration will be deducted.


6. BUSINESS LICENSE: The Contractor and, if applicable, any of its sub-contractors, must comply with all U.S. Virgin Islands laws with respect to licensing which must be obtained in connection with its business operation(s). The Contractor and all subcontractors hired in connection with this scope of work shall obtain all necessary and applicable business 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. 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 Contractor to present its performance bond and payment

bonds upon contract execution may, at the sole discretion of the Authority, be grounds to rescind the contract award. If scope of work under this Contract is changed to require additional work which results in an increase in the Contract's consideration, the performance and payment bonds, may, at the Authority's option, be increased to adequately cover the additional work in which cost Contractor shall be entitled to a cost adjustment for the cost of increasing the bond.

8. LIQUIDATED DAMAGES: The Authority may assess liquidated damages solely for Contractor's delay in performing the work, to compensate the Authority for loss of use of the project during the time it should have been completed but was still under construction. 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, the Contractor and his sureties shall be liable to the Authority and shall be assessed Five Thousand Dollars (\$5,000.00) a day subject to a maximum of liquidated damages not to exceed Five (5%) percent of the total contract consideration stated herein. The Authority may deduct any sum owing from any payment due to Contractor pursuant to this contract or exercise any remedies under law to collect such amount.

9. LATENT SITE CONDITIONS: Notwithstanding anything to the contrary, should concealed or unknown physical conditions be encountered in the performance of the Work, below the surface of the ground or in an existing structure, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, the Contract Price and Contract time for performance shall be equitably adjusted by Change Order.




Hazardous Materials: Notwithstanding anything to the contrary, the Contractor shall have no liability for any hazardous material as described above not introduced to the Work location by it, and the Authority shall indemnify, defend and hold harmless Contractor for any claims or liabilities arising from preexisting or latent hazardous materials, except to the extent Contractor negligently or willfully exacerbates same and fails to take action to mitigate any resultant damage.

10. 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 correspondence as incorporated in its submitted document attached hereto as Exhibit "A".

11. INDEMNIFICATION: If the Authority is entitled to defense and indemnification under this Agreement and 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.

12. ENVIRONMENTAL RESPONSIBILITY: The Contractor shall, in the performance of the Scope of 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 reasonably incurred in connection therewith.

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:

1. EPA- Environmental Protection Agency
2. OSHA - Occupational Safety and Health Administration
3. NEC- National Electric Code
4. NEMA-National Electric Manufacturer's Association
5. RCRA- Resource Conservation and Recovery Act
6. TSCA- Toxic Substance and Control Act
7. DOT- Department of Transportation
8. ASTM- American Society of Testing Materials
9. AGMA- American Generator Manufacturer's Association
10. NESC -National Electric Safety Code
11. AWWA- American Water Works Association

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12. NSF- National Sanitation Foundation
13. NACE- National Association of Corrosion Engineers
14. SSPC - Steel Structure Painting Council

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

14. COVID 19 REQUIREMENTS: The Contractor shall, during the pendency of this Contract develop a plan to ensure the health and safety of its workforce during the COVID-19 Pandemic. The Authority recommends the Contractor utilize the guidance referenced in the Electric Subsector Coordinating Councils (ESCC) Revision #2 document dated May 5, 2020, as well as other applicable OSHA and CDC guidance documents in the preparation of its plan. At execution of this Contract, Contractor shall present the Authority with a copy of its COVID-19 plan.

The Contractor's employees and subcontractors performing work for the Authority are required to adhere to the attached Contractor COVID-19 Protocols, a copy of which is attached hereto and made a part of this agreement as Appendix "E." Each employee of the Contractor performing work for the Authority who has traveled within the past three (3) months or has recently arrived in the Territory must fill out Appendix "E", which form must be submitted to the Authority's Human Resources Department.

The Contractor, with no exception, will be responsible for ensuring compliance with all the requirements stated herein.

15. 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:

Elton Leitch
Project Coordinator
V.I. Water and Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804-1450
elton.leitch@viwapa.vi
340-513-9307

The Contractor designates the following individual in the following capacity:

John Reynolds
Chief Commercial Officer
Haugland Virgin Islands
P.O. Box 11309
St. Thomas, U.S. Virgin Islands 00801
jreynolds@hauglandllc.com
(516) 336-6720 / (340) 714-9009

16. 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.

17. 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.

18. INSURANCE: The Contractor shall, at its expense, before any Work is

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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 April 07, 2019. A copy of the insurance certificate must be presented to the Authority's Contracting officer at contract execution.

19. 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 dated April 07, 2019. This document is attached hereto and incorporated by reference herein as Appendix "A",
2. The Authority's RFP PR-13-20 and cover letter dated November 22, 2019. This document is attached hereto and incorporated by reference herein as Appendix "B",
3. The Authority's Request for Proposal PR-13-20, Addendum I dated December 13, 2019. This document is attached hereto and incorporated by reference herein as Appendix "C",
4. The Authority's Composite Pole Installation Project Guidelines attached hereto and incorporated by reference herein as Appendix "D",
5. The Authority's Contractor COVID 19 Protocol incorporated by reference herein as Appendix "E",
6. The Contractor's Proposal to perform the Work and schedule received on December 19, 2019, and incorporated by reference herein as Exhibit "A"; and
7. HUD General Provisions ("HUD Rider") attached hereto and incorporated by reference herein as Exhibit B of Appendix "A".

In the event of any conflict between the written agreements comprising the Contract, the matter will be resolved according to the following descending order of precedence: (1) this Contract; (2) the Authority's General Contract Terms with Federal

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

20. 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". The General Contract Terms with Federal Requirements are modified as follows:

a. Clause 15 – Equipment and Construction Warranty-

- Delete in its entirety and insert the following:
 - a. The Contractor warrants, except as otherwise provided in this Clause, that all construction and workmanship included in the Work, shall be of the kind and quality called for in Specifications and shall be free from defect resulting from poor workmanship, materials or selection of materials.
 - b. The obligation of the Contractor under this warranty shall be limited to repairing or replacing, free of charge in place at the Site, construction or workmanship, which proves defective during the first twelve (12) months, commencing with the date of acceptance of the Work, but in no event later than twenty-four (24) months from the performance of the work. Provided that the notice of such defect and proof thereof is promptly sent to the Contractor. The Contractor may use Authority employees, to make such repairs and, or replacements which can be made at the Site and are within the normal

competence and capability of regular operation and maintenance personnel provided that the use of such personnel shall not interfere with the normal operation and maintenance of the Authority's facilities. The cost associated with the use of the Authority's employees shall be deducted from the cost of the project or otherwise paid by the Contractor.

b. Clause 17 - Compliance with Applicable Laws-

- Delete the words "any design or" from subsection b.
- Delete the words "of the equipment" and the word "engineering" from subsection c.

c. Clause 19 – Patent Infringement-

- Add a section c to read as follows:

The Indemnification obligations of the Contractor under Clause 19 shall not apply to materials and equipment furnished by the Authority.

d. Clause 23 – Indemnification for Injury and Damage Claims

- At subsection a, delete in line 2, the words "... or acts of negligence of the Authority, its employees or agents".
- Add new line at the end of the sentence as follows:

The indemnification obligations herein shall only apply to the negligent actions of the Contractor and its agents.

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

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

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

22. 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 of the scope of the Contract.

23. GOVERNING LAW: The laws of the U.S. Virgin Islands shall govern the interpretation and construction of this Agreement to the extent applicable. The Parties agree that all causes of action against either Party shall be brought in the court of competent jurisdiction in the Virgin Islands. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract

24. 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.

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 received, via e mail, addressed to the Parties as follows:

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The Authority: Lawrence J. Kupfer
Executive Director (CEO)
V.I. Water and Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804
lawrence.kupfer@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: William Haugland
Haugland Virgin Islands
18A Estate Havensight
St. Thomas, U.S. Virgin Islands 00803
(516) 336-6720
bill@hauglandllc.com

The 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.

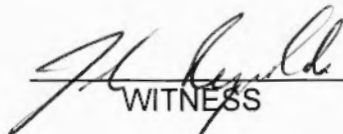
27. SURVIVAL: The following sections of this Contract will survive the termination or expiration of this Contract and will remain in effect until fulfilled:

- Clause 3: Consideration
- Clause 11: Indemnification
- Clause 19: Contract Documents (Order of Precedence)
- Clause 23: Governing Law

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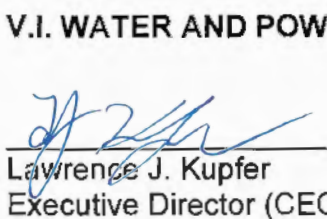
28. ENTIRE AGREEMENT: This Contract and the Contract Documents constitute the entire agreement of the Parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.

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

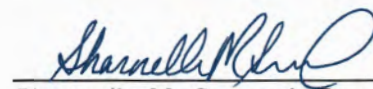

WITNESS

HAUGLAND VIRGIN ISLANDS
By: 
William Haugland
Chief Executive Officer/Chairman


WITNESS

V.I. WATER AND POWER AUTHORITY
By: 
Lawrence J. Kupfer
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

 11/17/2020
Sharnelle M. Samuel, Esq.
Acting General Counsel

Attachments