

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 AMERICAN WIRE GROUP, INC**

SC-24-21

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 30 day of MARCH, 2021, 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 AMERICAN WIRE GROUP, INC (hereinafter the "Seller") located at 2980 NE 207th Street, PH, Miami, Florida 33180 for the consignment of electrical material required for the construction and maintenance of the Authority's Transmission and Distribution System, on three separate islands St. Thomas, St. Croix, and St. John, USVI. The Authority and the Seller 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. **DEFINITIONS:** The term "Buyer Owned Inventory" or "BOI" shall mean all Products for which the risk of loss and title have passed to the Authority pursuant to terms of Section 6 of this Contract.

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A handwritten signature, possibly "NH", is enclosed within a hand-drawn circle.

The terms "**Product**" or "**Products**" as used herein shall mean all materials, equipment, and supplies shipped by the Seller to the Authority, and thereafter stored by the Authority and if used, shall be purchased by the Authority. Such products shall be marked as "Consignment" by the Seller. Provided however that any items unused by the Authority within the contract period may be returned by the Authority to the Seller or purchased by the Authority at its option, pursuant to the terms of this Contract.

The term "**Resalable**" as used herein shall mean Product(s) which is in as good a condition was when the Product was delivered to the Authority such that the Product(s) could be resold to a third-party entity by the Seller, is in its original packaging with no damage sustained during storage in the Authority's Warehouse, with all manufacturer warranties remaining transferrable from the Seller to a third-party buyer.

The term "**Seller owned inventory (SOI)**" as used herein shall mean all Products shipped by the Seller to the Authority and stored in the Warehouse(s) prior to the passing of title and risk of loss to the Authority pursuant to the terms of Section 6 of this Contract.

The Term "**Warehouse**" or "**Warehouses**" shall mean those facilities located at the Authority's St. Thomas Randolph Harley Plant, St. Croix Estate Richmond Plant, and at the St. John Line Department which are used by the Authority to stock and keep equipment, materials and supplies used by the Authority's Electrical Transmission and Distribution Department.

All capitalized but undefined terms set forth herein shall have the meaning ascribed to such terms as set forth in the Authority's General Contract Terms for Equipment and Supplies attached hereto and incorporated by reference herein as Appendix "A" and the Authority's Request for Proposal, PR-06-21 dated September 2020.

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2. SCOPE OF WORK: The Seller is responsible for the Scope of Work (hereinafter the "Work") in which the Seller shall consign the electrical material required for the construction and maintenance of the Authority's Line Departments, on three separate islands, St. Croix, St. Thomas, and St. John, in accordance with the Authority's Request for Proposal PR-06-21. The Seller will warehouse the materials at Seller owned or rented facilities until the Authority requests shipment of the materials to the Authority's Warehouse. The Work shall conform to the requirements contained in the following documents:

1. The Authority's General Contract Terms for Equipment and Supplies with Federal Requirements dated October 29, 2019. This document is attached hereto and incorporated by reference herein as Appendix "A",
2. The Authority's Request for Proposal PR-06-21 and cover letter dated September 14, 2019. This document is attached hereto and incorporated by reference herein as Appendix "B",
3. The Authority's Request for Proposal PR-06-21, Addendum I dated September 21, 2020. This document is attached hereto and incorporated by reference herein as Appendix "C",
4. The Authority's Request for Proposal PR-06-21, Addendum II dated September 29, 2020. This document is attached hereto and incorporated by reference herein as Appendix "D",
5. The Authority's Request for Proposal PR-06-21, Addendum III dated October 6, 2020. This document is attached hereto and incorporated by reference herein as Appendix "E",
6. The Authority's Return Material Authorization form attached hereto and incorporated by reference herein as Appendix "F",
7. The Sellers Proposal to perform the Work, received on September 8, 2020, and incorporated by reference herein as Exhibit "A",

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8. The Authority's Request for Proposal PR-06-21, Clarification I dated October 26, 2020. This document is attached hereto and incorporated by reference herein as Exhibit "B", and
9. HUD General Provisions ("HUD Rider") attached hereto and incorporated by reference herein as Exhibit B of Appendix "A."

3. **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 one (1) year from the effective date in the Notice to Proceed.

4. **CONSIDERATION:** In consideration of the Seller's performance of the Work, the Authority shall pay the Seller the amount not to exceed Twenty-Nine Million, Nine Hundred Thirty-Nine Thousand, Six Hundred and 23/100 (\$29,939,600.23) (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. The parties acknowledge that the prices set forth in the price list attached hereto as Exhibit H are subject to change in the event of any applicable tariff or other increase in Seller's acquisition costs implemented by third-party suppliers or manufactures. The Seller will provide the Authority with notice of any price adjustments. The Authority shall approve the purchases prior to the Seller making any purchases where costs have increased. The Authority will not be responsible for costs exceeding that set forth in Exhibit H unless approval has been secured prior to the purchase.

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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 (FEMA) under federal grant as payment to the Authority. To the extent unpaid to the Seller, the Authority hereby assigns and conveys rights, title and interest in reimbursement from FEMA for services provided by the Seller 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.

5. TERMS OF PAYMENT: The Seller shall submit itemized and duly certified invoices electronically to the Authority's Project Manager. Invoices should also be submitted to the Grants Management Department at grantsmanagement@viwapa.vi. All invoices are Net 45 days after the invoice date. The Seller shall invoice the Authority at such time that the title and risk of loss for any Product(s) passes to the Authority pursuant to the terms of section 6.

6. SHIPMENT: Title and risk of loss for all Product(s) delivered to the Authority from Seller shall pass from the Seller to the Authority upon the earlier to occur of: (i) when the Authority removes the Product(s) from its Warehouse for use by the Authority in the normal course of the Authority's business, or (ii) one (1) year following the commencement date hereof for all unused Products remaining in the Authority's Warehouse at the conclusion of the initial contract term that are not in resalable condition, or one (1) year following any renewal term for all unused Products remaining in the Authority's Warehouse that were shipped to the Authority during such renewal term and are not in resalable condition. The Seller shall keep all SOI Products insured for the value

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thereof until such time as the title and risk of loss pass to the Authority pursuant to Section 6 hereof. The Seller agrees to inspect all SOI Products prior to shipping same to the Authority, and the Seller shall pursue any freight claims for SOI Products damaged in transit by Seller's shipper. The Seller shall arrange for and pay for the cost to deliver the products to the shipping port in the Continental United States specified by the Authority, whereupon the Authority will arrange for and pay the cost to transport the Product(s) to its facilities in the United States Virgin Islands. The Seller shall insure the Product(s) during the time periods in which the Product(s) is being transported and shipped from the Seller to the Authority's Warehouses.

The proceeds of any insurance claim obtained from damages sustained to the SOI products during shipment shall be the property of the Seller. Upon receipt of any order, the Authority shall have ten (10) working days to inspect the order to determine any non-conforming or damaged goods; and such goods will be returned at the Authority's cost to the Seller. The Authority will advise if replacement of such goods is required.

7. **BUSINESS LICENSE:** The Seller 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 Seller 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 Seller is provided additional time to secure its license and fails to do so in a timely manner.

8. **TAXES:** All product prices are exclusive of any applicable sales, use, excise, or other similar taxes.

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9. **WARRANTIES:** The Seller warrants that all SOI Products sold are free of any security interest and will make available to the Authority all transferable warranties made to Seller by the manufacturer of the SOI Products. THE SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, AND SPECIFICALLY MAKES NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE. UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER, PRODUCTS SOLD HEREUNDER ARE NOT INTENDED FOR USE IN OR IN CONNECTION WITH A NUCLEAR FACILITY.

10. **REMEDIES:**

10.1 The Authority's remedies under this Contract with respect to the Products are subject to any limitations contained in the manufacturer's terms and conditions regarding said BOI Products, a copy of which will be furnished by the Seller upon execution of the Contract. Furthermore, the Seller's liability for the BOI Products shall be limited to either repair or replacement of the BOI Products or refund of the purchase price, all at Authority's option after the Product is deemed used by the Authority. Any claims for shortages other than loss in transit, must be made in writing not more than ten (10) days after receipt of shipment of the Product.

10.2 In no event shall the Seller or the Authority be liable for incidental or consequential damages.

11. **CONFIDENTIALITY:**

11.1 Any confidential information of a transferring party (the "Disclosing Party") which is disclosed to or otherwise received or obtained by the other party (the "Receiving Party") incident to this Agreement shall be held in confidence, and the Receiving Party

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shall not publish or otherwise disclose such confidential information to any person or use any such confidential information, except as reasonably may be required in connection with the transactions contemplated by this agreement or if required by law. Without limiting the generality of the foregoing, each party shall observe the same safeguards and precautions with regard to confidential information of the Disclosing Party which such party observes with respect to its own information of the same or similar kind.

11.2 If the Receiving Party receives a request from any person, entity, governmental agency, or legislative body (in each case, a "Required Disclosure"), and such Request is made pursuant to Applicable Law, including, without limitation, Virgin Islands law at 3 V.I.C. §§881-884; provided that, prior to making any Required Disclosure to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall promptly notify the Disclosing Party of the request with prompt written notice of any such request or requirement and shall provide the Disclosing Party with a copy of the request, so that the Disclosing Party, at its own expense, may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.

11.3 If the Receiving Party receives any request other than a Required Disclosure (a "Public Request"), the Receiving Party shall promptly notify the Disclosing Party of the Public Request and shall provide the Disclosing Party with a copy of the Public Request. Upon receipt of such notice from the Receiving Party, the Disclosing Party may either (i) contest the Public Request at its sole expense, and agree to indemnify and hold harmless the Receiving Party for any liability (including cost of defense and reasonable attorneys' fees) arising out of or relating to such Public Request, or (ii) consent to the disclosure of Confidential Information.

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11.4 The Receiving Party shall not disclose any Confidential Information requested pursuant to the Public Request until the earlier to occur of (i) the provision by the Disclosing Party of its written consent to the disclosure of Confidential Information in response to the Public Request, or (ii) the Receiving Party is served with a Disclosure Order. If the Disclosing Party fails to respond to the notice from the Receiving Party regarding the Public Request within ten (10) Days of receipt of such notice, it shall be deemed to have consented to the Receiving Party's disclosure of the Confidential Information requested pursuant to the Public Request.

11.5 If disclosure is required pursuant to this Section 11, the Receiving Party shall limit such disclosure only to the Confidential Information explicitly requested in the Request.

11.6 The obligation to retain confidential information in confidence shall continue in full force and effect until the earlier of (i) the second (2nd) anniversary of the disclosure of such information, or (ii) the second (2nd) anniversary of the expiration or earlier termination of this Agreement, with respect to any Confidential Information obtained by any party prior to such termination.

12. WAIVER: Any delay or failure of any party hereto at any time to require performance by any other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that or any other provision of this Agreement and shall not be construed as (i) a waiver of any subsequent breach of any provision; (ii) waiver of this provision itself; or (iii) a waiver of any other right under this Agreement.

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13. RETURN GOODS POLICY: The Seller will accept returns for any unused Products under the following conditions:

A. Return of SOI Products:

1. NO SOI Products can be returned without a return material authorization form ("RMA") attached as "Appendix F".
2. All SOI Products must be in Resalable condition and in original packaging.
3. SOI unused Products will be acceptable.

B. Return of SOI Non-Stock Products

1. The Authority will be notified of any restocking charge prior to returning to manufacturer if return is not due to an error of Seller or manufacturer. SOI Products should be held by Authority until receipt of RMA from Seller, whenever possible. The standard restocking fee is 25% of the product price plus all freight fees required for return to Seller's facility in the United States.
2. Credit will be issued within five (5) days of Seller's receipt of returned SOI Products from the Authority that are in Resalable Condition. All SOI Products must be in RESALABLE condition.
3. In instances where non-stock return or SOI Products is caused by a Seller error, all re-stocking charges are waived, and a credit will be issued within five (5) days of receipt of SOI Products.

C. NON-RETURN OF SOI PRODUCTS

Notwithstanding anything contained herein to the contrary at the expiration of the terms of this Contract. The Authority agrees to be obligated to and will purchases all the following types of product, located in the Sellers warehouse, transformers, wooden poles, and LED lights.

It is acknowledged by the parties that these specified items were manufactured and acquired specifically for use by the Authority and that these items are difficult to resell in the open market.

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The term "Non-Stock Product(s)" means any product that is not maintained by the Seller in its warehouse facility prior to consignment and is manufactured specifically for use by the Authority.

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:

Leonard Thomas
Project Manager
V.I. Water and Power Authority
P.O. Box 5597
Christiansted, St. Croix, U.S. Virgin Islands 00823
Leonard.Thomas@viwapa.vi

Sterling Knight
Project Manager
V.I. Water and Power Authority
P.O. Box 1450
St. Thomas, U.S. Virgin Islands 00804-1450
Sterling.Knight@viwapa.vi

The Seller designates the following individual in the following capacity:

Alla Gerenshteyn
Vice President
Transmission and Distribution
American Wire Group, INC
2980 NE 207th Street, PH,
Miami, FL 33180
allag@buyawg.com
954-701-8966

15. CONTRACT DOCUMENTS: The Seller 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 for Equipment and Supplies with Federal Requirements dated October 29, 2019. This document is attached hereto and incorporated by reference herein as Appendix "A",
2. The Authority's Request for Proposal PR-06-21 and cover letter dated September 14, 2019. This document is attached hereto and incorporated by reference herein as Appendix "B",

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3. The Authority's Request for Proposal PR-06-21, Addendum I dated September 21, 2020. This document is attached hereto and incorporated by reference herein as Appendix "C",
4. The Authority's Request for Proposal PR-06-21, Addendum II dated September 29, 2020. This document is attached hereto and incorporated by reference herein as Appendix "D",
5. The Authority's Request for Proposal PR-06-21, Addendum III dated October 6, 2020. This document is attached hereto and incorporated by reference herein as Appendix "E",
6. The Authority's Return Material Authorization form attached hereto and incorporated by reference herein as Appendix "F",
7. The Seller's Proposal to perform the Work and Schedule, received on September 8, 2020, and incorporated by reference herein as Exhibit "A",
8. The Authority's Request for Proposal PR-06-21, Clarification I dated October 26, 2020. This document is attached hereto and incorporated by reference herein as Exhibit "B", and
9. 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 for Equipment and Supplies with Federal Requirements; (3) the Authority's Request for Proposal and its Addendums thereto attached, and (4) the Seller's proposal response. The Contract and Contract documents constitute the entire agreement between the Parties.

16. ASSIGNMENT: Neither the Seller nor the Authority shall assign this Agreement to any interest therein, without prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any assignment prohibited hereby shall be null and void.

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17. INVALIDITY AND AMENDMENTS: If any of the provisions of this Agreement are invalid under applicable statute or rule of law, they are, to that extent, to be deemed to be omitted.

18. GENERAL CONTRACT TERMS: This Contract is subject to the Authority's General Contract Terms for Equipment and Supplies with Federal Requirements attached hereto and made a part hereof as Appendix "A" and which is revised by mutual agreement of the parties as follows:

- a) Clause 11 – Delivery and force Majeure

Insert the following section:

COVID- 19

The Authority recognizes the uncertainties surrounding the COVID-19 pandemic, should the execution of work be affected as a result of the pandemic, alternative options shall be considered.

- b) Clause 30 – RIGHT TO AUDIT

Insert the following to section (1)

The right to audit is only limited to the work and/ or materials furnished by the contractor under the contract dated.

19. 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.

20. 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

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agree that all causes of action against either Party shall be brought in the court of competent jurisdiction in the Virgin Islands.

21. 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.

22. 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:

The Authority: Noel Hodge
Interim 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 Seller: Alla Gerenshteyn
Transmission and Distribution
American Wire Group, INC
2980 NE 207th Street, PH,
Miami, FL 33180
allag@buyawg.com
954-701-8966

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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.

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


- Clause 4: Consideration
- Clause 15: Contract Documents (Order of Precedence)
- Clause 20: Governing Law

24. 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.

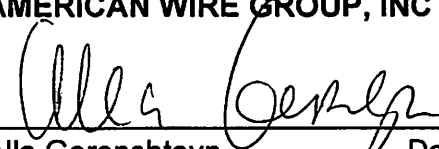
SIGNATURE PAGE TO FOLLOW

NA 

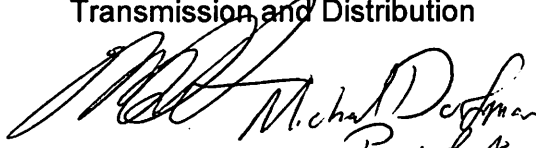
IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the
day, month and year first above-written.



WITNESS

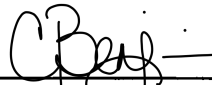
AMERICAN WIRE GROUP, INC
By:  3/30/21

Alla Gerenshteyn Date
Vice President
Transmission and Distribution

 3/30/21

Michael Dorfman
President

V.I. WATER AND POWER AUTHORITY



WITNESS

By:  04-18-2021

Noel Hodge Date
Interim Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

 03/09/2021

Sharnelle M. Samuel, Esq. Date
Acting General Counsel

Attachments

