

**BLDC Water Wastewater Infrastructure Program
Tender Package # 2B.2 – Mullet Bay Park to Tiger Bay Lift Station
Piping & Pumping Infrastructure**

Annex A - Form of Agreement

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AGREEMENT

The Employer is

Bermuda Land Development Company Limited
1 Triton House, Longfield Road, Southside, St. David's, DD03
P.O. Box GE 220 St. Georges GE BX , Bermuda

The Contractor is

The Employer desires the execution of certain Works known as

BLDC Water Wastewater
Infrastructure Program Tender
Package # 2B.2

OFFER

The Contractor has examined the documents listed in the Appendix which forms part of this Agreement and offers to execute the Works in conformity with the Contract for the sum of

(in words) _____

(in figures) _____

This offer, of which the Contractor has submitted two signed originals, may be accepted by the Employer by signing and returning one original of this document to the Contractor before

(insert date) _____

The Contractor understands that the Employer is not bound to accept the lowest or any offer received for the Works.

Signature: _____ Authorised to sign on behalf of the Contractor

Name: _____ Date: _____

Capacity: _____

ACCEPTANCE

The Employer has by signing below, accepted the Contractor's offer and agrees that in consideration for the execution of the Works by the Contractor, the Employer shall pay the Contractor in accordance with the Contract. This Agreement comes into effect on the date when the Contractor receives one original of this document signed by the Employer.

Signature: _____ Authorised to sign on behalf of the Ministry of
Public Works

Name: _____ Date: _____

Capacity: _____

APPENDIX

This Appendix forms part of the Agreement.

Sub-Clause	Item	Data
1	General Provisions	
1.1.1	Documents forming the Contract listed in order of priority (a) Letter of Acceptance (b) Annex B – Pricing Proposal Price Breakdown (c) Appendix D – RFP particulars (d) Appendix E – Certificate of Confirmation of Non-Collusion (e) Addenda (f) Annex C -Specifications (g) Drawings\	Document Identification
1.1.9.....	Time for Completion	15 weeks
1.4	Law of the Contract	Laws of Bermuda
1.5	Language	English
2	The Employer	
2.1	Provision of Site	On the Commencement Date.
3	Employer's Representatives	
3.1	Authorized Person	BLDC Special Projects Manager Bermuda Land Development Company Limited
3.2	Name and address of Employer's representative (if known)	1 Triton House, Longfield Road, Southside, St. David's, DD03 P.O. Box GE 220 St. Georges GE BX , Bermuda
4	The Contractor	
4.4	Performance Security (if any):	NA
4.4	Amount	
4.4	Form	

Sub-Clause	Item	Data
7	Time for Completion	
7.2	Time for submission	Within 14 calendar days of the Commencement Date
7.2	Form of programme	Microsoft Project – Electronic format
7.4	Amount payable due to failure to complete	\$ 3,500 per day up to a maximum of 10% of sum stated in the
9	Defects Liability	
9.1& 11.5	Period for notifying defects	365 days calculated from the date stated in the notice under Sub-Clause 8.2
10	Variations and Claims	
10.2	Day work rates	Annex B– Proposal Price Breakdown
11	Contract Price and Payment	
11.1	Lump Sum Price Subject to Re-Measurement	Annex B - Proposal Price Breakdown
11.2	Percentage of value of Materials and Plant	Materials 80% Plant 90%
11.3	Percentage of retention	10%
11.7	Currency of payment	Bermuda Dollars
11.8	Rate of interest	0.5% per annum
14	Insurance	
14.1	The Works, Materials, Plant and fees	The sum stated in the Agreement plus 15%
14.2	Contractor's Equipment	Full replacement cost
14.3	Third party injury to persons and damage to property	\$ 2,000,000.00
14.4	Workers	\$ 2,000,000.00
	Other Cover	
	Exclusions	
15	Claims Disputes and Arbitration	
15.3	Rules	Bermuda Arbitration Act 1986
15.3	Appointing authority	In accordance with the Bermuda Arbitration Act 1986
15.3	Place of Arbitration	Bermuda

CONDITIONS OF CONTRACT

1.0 Plant and Design Build Contract - GENERAL CONDITIONS

The conditions of contract are the **Conditions of Contract for the Short Form of Contract, First Edition 1999**, published by the Federation Internationale des Ingenieurs-Conseils (FIDIC). This document is attached.

The General Conditions of Contract are amended by the Particular Conditions of Contract.

2.0 Short Form Contract - PARTICULAR CONDITIONS

Preamble

These Particular Conditions supplement the General Conditions, and shall modify, delete and/or add to the General Conditions. Where any clause, paragraph, or sub-paragraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any clause, paragraph, or sub-paragraph in the General Conditions is amended, deleted or superseded by any of the following paragraphs, the provisions of such clause, paragraph, or sub-paragraph, not so amended, deleted or superseded shall remain in effect.

Clause numbers herein refer to the same clause numbers as in the General Conditions.

A. References from Clauses in the GENERAL CONDITIONS

4The Contractor

Add the following Sub-Clauses:

4.5

Protection of Utilities

The Contractor shall carry out the Works so that there is the minimum of interruption to the supply of water, data/communications, electricity and other services through existing mains and services. Work involving interference with existing works of any kind shall only be carried out with the permission of and during such times and in such a manner as are agreed in writing by the Employer.

4.6

Electricity Water & Gas

The Contractor shall be responsible for the provision of all, power water and other services that he may require for the Works and shall pay and bear all costs associated therewith.
The Contractor shall carry out the Works so that there is the minimum of interruption to the supply of water, telephone, electricity and other services through existing mains and services. Work involving interference with existing works of any kind shall only be carried out with the permission of and during such times and in such a manner as are agreed in writing by the Engineer or competent Authority

4.7

Reporting of Errors

The Contractor shall examine and compare the Contract Documents and shall report any errors, inconsistencies, or omissions he may find to the Employer immediately.

4.8

Damage to Persons & Property

The Contractor shall, immediately on occurrence of any incident involving loss or injury at or about the Site, or in connection with the execution of the Works, report such incident to the Engineer or the Engineer's Representative. The Contractor shall also report such incident to the appropriate Authority whenever such report is required by Law.

4.9

Rates, Wages, Hours and Conditions of Labour

The Contractor shall pay to all Foremen, Craftsmen, and Labourers not less than the rates of wages for the various Foremen, Craftsmen, and Labourers that prevail in Bermuda, and comply with such requirements relating to hours of work and conditions of labour as are or may be laid down from time to time by the Laws of Bermuda.

4.10

Facilities for Staff & Labour

The Contractor shall provide such accommodation and amenities as he may consider necessary for all his expatriate staff and labour, employed for the purposes of or in connection with the Contract. The Contractor shall comply with all local statutes and regulations and any amendments thereto with regard to the health and safety of his employees and others, and shall provide adequate latrines for his workers on the Site to conform to the requirements of the Department of Health.

4.11

Display of Notices

The Contractor shall post notices to inform the workers of their conditions of work in conspicuous places at the establishments and work places concerned.

4.12

Alcoholic Liquor & Drugs

The Contractor shall not, otherwise than in accordance with the Statutes, Ordinance and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor, or drugs, or permit, or suffer any such importation, sale, gift, barter, or disposal by his sub-contractors, agents, or employees.

4.13

Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same aforesaid.

4.14

Festivals & Religious Festivals

The Contractor shall in all dealings with labour in his employment have due regard to all recognized festivals, public holidays, days of rest, and religious or other customs.

4.15

Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

15.0

Resolution of Disputes and Arbitration

Delete Sub-Clauses 15.1 in its entirety and replace with the following:

15.1

Notice of Dissatisfaction

This clause is deleted in its entirety and replaced by:

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Employer, a notice of dissatisfaction shall be issued by either Party to the other Party. Where such notice is given both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at an amicable settlement has been made.

15.2

Arbitration

This clause is deleted in its entirety and replaced by:

Unless settled amicably, any dispute shall be finally settled by arbitration, unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled in accordance with the Bermuda Arbitration Act 1986
- (b) the dispute shall be settled by arbitrators appointed in accordance with the said Act, and
- (c) the arbitration shall be conducted in the English language.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence nor did arguments previously put before the Engineer to obtain his decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Engineer shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works, by mutual agreement. The obligations of the Parties and the Engineer shall not be altered by reason of any arbitration being conducted during the progress of the Works.

B. Additional Clauses to be added to the GENERAL CONDITIONS

16.0	
Taxation	The Contractor shall be required to pay Bermudian Taxes on all Contractor's Equipment (except as described in the Fifth Schedule, Section 2 of the Customs Tariff Act 1970) materials and other things of whatsoever nature brought into Bermuda for the purpose of Contract.
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17.0	
Bribery	Any commission, advantage, gift, gratuity, reward, or bribe given, promised, or offered by or on behalf of the Contractor or his agent or servant or any person on his or their behalf to any officer, servant, representative, or agent of the Employer or Engineer or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other Contract with the Employer shall in addition to any criminal liability which may be thereby incurred subject the Contractor to the cancellation of this and of all other contracts which he may have entered into with the Employer and also to the payment of any loss or damage resulting from such cancellation.
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18.0	
Debt Recovery	The Employer shall be entitled upon a certificate in writing of the Engineer to deduct the amounts so certified from any monies or otherwise due to the Contractor under this or any other contract or to recover the said amounts as a debt due or partly the one and partly the other as the Employer shall deem advisable.
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19.0	
Strikes and Lock-Outs	The Contractor shall forthwith notify the Employer of the commencing of any strike or lock-out and the Employer, on account of any delay caused thereby, may grant such extension of time as he considers reasonable, without prejudice to the right of the Employer to exercise after the expiration of such reasonable extension of time the rights and powers under these Conditions in case of default by the Contractor.
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20.0	
Laws, Regulations and Orders	The Contractor shall make himself fully acquainted with the Laws, Regulations and Orders of Bermuda and of any competent/statutory Authority and shall conform in all respects therewith during the continuance of the Contract. He shall conform similarly with any such Laws, Regulations and Orders which may come in to force after the date of this Agreement.
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21.0	
Construction of Contract	The Contract shall in all respects be constructed and operated in conformity with the Laws of Bermuda and the respective rights and liabilities of the Parties shall be in accordance with the Laws for the time being in force.
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22.0	
Members and Staff of Employer and Engineer not Personally Liable	Neither the members nor the staff of the Employer shall be in any way personally bound or liable for the acts or obligations of the Contractor under the Contract or answerable for any default or omission in the observance or performance of any of the acts, matters or things which are herein contained.
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23.0	

Details to be Confidential

The Contractor shall treat the details of the Contract as private and confidential, save in so far as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer. If any dispute arises as to the necessity or disclosure for the purpose of the Contract the same shall be referred to the decision of the Employer whose award shall be final.

24.0

Rights and Remedies Not Waived

In no event shall the making by the Employer of any payment to the Contractor constitute or be construed as a waiver by the Employer of any breach of Contract, or any default which may then exist, on the part of the Contractor, and the making of any such payment by the Employer while any such breach or default exists shall in no way impair or prejudice any right or remedy available to the Employer in respect of such breach or default.

END OF CONTRACT DOCUMENTS