



MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“MOA”) is made this 27th day of April, 2022 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Planning and Natural Resources (hereinafter referred to as “Government”) and the Virgin Islands Economic Development Authority (“USVIEDA”), both hereinafter referred to as “the Parties”.

WITNESSETH

WHEREAS, the Government is in need of the services of USVIEDA to partner in administering the U.S. Virgin Islands CARES Act Fisheries Assistance Program to provide financial relief to commercial fishers, wholesale dealers, aquaculture operators, and charter/for-hire fishing operators affected by the COVID-19 pandemic through direct payout; which duties and responsibilities are more particularly described in ADDENDUM I (Scope of Work) attached hereto;

WHEREAS, USVIEDA was selected in accordance with 31 V.I.C. § 239(a)(8);

WHEREAS, USVIEDA is a semi-autonomous government instrumentality of the Government of the Virgin Islands formed pursuant to V.I. CODE ANN. title 29, chapter 21 for certain purposes, to include the development of comprehensive programs for the economic development of the Virgin Islands;

WHEREAS, the USVIEDA is authorized pursuant to 29 V.I.C. § 1103, Fourth Charter, ¶ (H) “to accept grants or loans from, and enter into contracts, leases, agreements, or other transactions . . . with the Government of the Virgin Islands, the United States or any agency, instrumentality, commission, authority or political subdivision thereof;”

WHEREAS, The Economic Development Bank for the United States Virgin Islands (“EDB”) is a public corporation and governmental instrumentality formed pursuant to V.I. CODE ANN. title 29, chapter 14 as a subsidiary entity of, subordinate in administration and operation to the USVIEDA;

WHEREAS, EDB is authorized pursuant to 29 V.I.C. § 902, Third Charter, ¶ (I) “[t]o serve as fiscal agent or broker for United States Virgin Islands' enterprises seeking to qualify for grants, loans or any other form of financial or other assistance for the Federal Government or any of its departments, agencies or instrumentalities;”

WHEREAS, pursuant to 11 V.I.C. § 1405a, EDB is authorized to grant emergency storm-related loans to farmers and fishermen and has demonstrated the capacity to handle of such emergency funds;



WHEREAS, the Department of Planning and Natural Resources (“DPNR”) was formed pursuant to V.I. CODE ANN. title 3, chapter 22 as an executive department in the Government of the Virgin Islands to protect, maintain and manage the natural and cultural resources of the Virgin Islands, through the coordination of economic development, in collaboration with local, federal and non-government organizations, enabling present and future Virgin Islands generations to live safer, fuller lives in harmony with their environment and cultural heritage;

WHEREAS, DPNR is authorized pursuant to 3 V.I.C. § 401 to “perform such functions as may be required by federal law in order to participate in federally-aided projects or programs and serve as the state agency of the Government of the United States Virgin Islands for participation in all programs of the United States Government relating to its authorized fields of activity”;

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act provided fast and direct economic assistance for American workers, families, small businesses, and industries to address issues related to the coronavirus 2019 (“COVID-19”) pandemic. The CARES Act authorized the U.S. Secretary of Commerce to provide \$300 million for economic assistance to affected fishery participants;

WHEREAS, fisheries are a significant part of U.S. Virgin Islands life;

WHEREAS, pursuant to 11 V.I.C. § 1403(h), the Commissioner of DPNR is authorized to “[r]eceive and administer such federal grants and other financial aids as are available for the promotion and development of the commercial fishing industry”;

WHEREAS, the U.S. Virgin Islands CARES Act Fisheries Assistance Program (“Program” or “Project”) received funding to provide financial relief to stakeholder groups (i.e., commercial fishers, wholesale dealers, aquaculture operators, and charter/for-hire fishing operators) affected by the COVID-19 pandemic through direct payout;

WHEREAS, based on the National Oceanic and Atmospheric Administration (“NOAA”) allocation, forty-two percent (42%) of the direct assistance shall be allocated to commercial, wholesale, and aquaculture ventures and fifty-eight percent (58%) of the direct assistance shall be allocated to charter fishers;

WHEREAS, CARES Act support to fishery participants represents money that will stay in the U.S. Virgin Islands economy and support the Territory in its efforts to mitigate the negative coronavirus (“COVID-19”) pandemic impacts to fisheries;

WHEREAS, the Parties wish to partner in administering the CARES Act funding to eligible Virgin Islands fishery participants;



WHEREAS, the Government requires USVIEDA's support in managing the Program. Such program management support shall include but not be limited to direct financial payments to approved applicants, and activities identified by the Parties that ensure successful completion of the Program; and

WHEREAS, USVIEDA has the ability and expertise to provide the herein described program management support.

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NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the Parties hereto covenant and agree as follows:

- 1. SERVICES.** USVIEDA shall provide the services described in ADDENDUM I: Scope of Work ("Services") attached hereto and made a part of this MOA.
- 2. TERM AND EFFECTIVE DATE.** The MOA shall be effective and commence on the date of execution by the Commissioner of the Department of Property and Procurement and shall terminate December 31, 2022. In the event the Government receives an extension of the performance period under Grant No. NA21NMF4540004, the Government will have the option to extend the Term of this Agreement by a period of six (6) months, by providing the USVIEDA with fifteen (15) days written notice of the Government's election to extend, in which case, on mutual agreement of the Parties, the Term of the MOA will be extended using the Government's Exercise of Renewal Option Form.
- 3. COMPENSATION.** DPNR in consideration of the satisfactory performance of the services described in ADDENDUM I: Scope of Work, agrees to pay USVIEDA a sum not to exceed **Three Hundred Eight Thousand Eight Hundred Sixty-seven Dollars and Seventy Cents (\$308,867.70)** in accordance with the provisions set forth in ADDENDUM II: Compensation attached hereto and made a part of this MOA.
- 4. TRAVEL EXPENSES.** Travel expenses shall be included in the compensation for services as specified in Paragraph 3 (Compensation) above and there shall be no itemized travel costs.
- 5. RECORDS.** USVIEDA shall maintain all records related to this MOA in a central location for a period of at least seven (7) years following the date of final payment and close-out of all pending matters related to this MOA. USVIEDA shall present precise records of time and/or money expended under this MOA.
- 6. PROFESSIONAL STANDARDS.** USVIEDA agrees to maintain the professional standards applicable to its Services and to similar contractors doing business in the U.S. Virgin Islands.
- 7. DOCUMENTS, PRINTOUTS, ETC.** All pertinent documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this MOA shall become the property of the Government and shall be turned over to it at the termination of this MOA. USVIEDA shall retain copies for recordkeeping and audit purposes.



- 8. LIABILITY OF OTHERS.** Nothing in this MOA shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by USVIEDA as servants, agents, or independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations, and taxes of USVIEDA, of whatever nature, including but not limited to unemployment insurance and social security taxes for USVIEDA, its servants, agents, or independent contractors.
- 9. ASSIGNMENT.** USVIEDA shall not subcontract or assign any part of the services under this MOA without prior written consent of the Government. The Parties may respectively utilize the assistance of other government agencies and programs including but not limited to the Virgin Islands Small Business Development Center (SBDC) to accomplish the goals set forth in this MOA.
- 10. INDEPENDENT CONTRACTOR.** USVIEDA shall perform this MOA as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.
- 11. GOVERNING LAW.** This MOA shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.
- 12. WAIVERS AND AMENDMENTS.** No waiver, modification, or amendment of any term, condition, or provision of this MOA shall be valid or of any force or effect unless made in writing, signed by the Parties hereto or 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 MOA, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.
- 13. ENTIRE AGREEMENT.** This MOA constitutes the entire agreement between the Parties relating to the subject matter addressed in this MOA. This MOA supersedes all prior communications or agreements between the Parties with respect to the subject matter addressed in this MOA, whether written or oral.
- 14. RIGHT TO WITHHOLD.** If work under this MOA is not performed in accordance with the terms hereof, the Government shall have the right to withhold out of any payment due to USVIEDA, such sums as the Government may deem sufficient to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or



to satisfy such claims. The Government shall immediately notify USVIEDA, in writing, in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the Government if and while USVIEDA gives satisfactory assurance to the Government that such claims will be paid by USVIEDA or its insurance carrier, if applicable, in the event that such contest is not successful.

15. **CONDITION PRECEDENT.** This MOA shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.
16. **TERMINATION.** Either party shall have the right to terminate this MOA, with or without cause, on 30 days' written notice to the other party specifying the date of termination.
17. **PARTIAL TERMINATION.** The performance of work under this MOA may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing 30 days' written notice to USVIEDA. This partial termination shall be effected by delivering to USVIEDA a "Notice of Partial Termination" specifying the extent to which the term and/or duties under this MOA are terminated and the date upon which such termination becomes effective. USVIEDA shall be entitled to receive payment for Services provided to the date of termination, including payment for the period of 30-day notice.
18. **NON-DISCRIMINATION.** No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this MOA on account of race, creed, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age (40 or older), or genetic information (including family medical history).
19. **CONFLICT OF INTEREST.** USVIEDA covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the Services required to be performed under this MOA.

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20. **NOTICE.** Any notice required to be given by the terms of this MOA shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, address to the Parties as follows:

GOVERNMENT:

ANTHONY D. THOMAS
Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas U.S. Virgin Islands 00802

JEAN-PIERRE L. ORIOL
Commissioner
Department of Planning & Natural Resources
4611 Tutu Park Mall, Suite 200
St. Thomas, Virgin Islands 00802

COPY TO: Nicole F. Angeli, Ph.D.
Director, Division of Fish & Wildlife
Department of Planning and Natural Resources
45 Estate Mars Hill
Frederiksted, VI 00840

VIRGIN ISLANDS ECONOMIC DEVELOPMENT AUTHORITY:

WAYNE L. BIGGS, JR.
Chief Executive Officer
8000 Nisky Shopping Center, Ste. 620
St. Thomas, VI 00802

COPY TO: Monique T. Samuel
Managing Director, Economic Development Bank
Virgin Islands Economic Development Authority
116 King St.
Frederiksted, VI 00840



The address of either party may be changed from time to time by giving written notice to that effect. In a force majeure event, notice shall be permitted by email with delivery and read receipts and the subject line "LEGAL NOTICE – MOA DPNR-USVIEDA" in all caps.

- 21. OTHER PROVISIONS.** Addenda I (Scope of Work), II (Compensation), and III (Tiers) and Attachments A (USVI CARES Act Fisheries Assistance Program Application), B (Self-Certification Affidavit), and C (Monthly Statistical Report) attached hereto are made part of this MOA and are incorporated herein by reference.
- 22. DEBARMENT CERTIFICATION.** By execution of this MOA, USVIEDA certifies that it is eligible to receive awards using federally appropriated funds and that it has not been suspended or debarred from entering into agreements with any federal agency. USVIEDA shall include this provision in any subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT". In the event USVIEDA or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, USVIEDA or subcontractor agrees that it shall not be entitled to payment for any work performed under this MOA or any subcontract and that USVIEDA or subcontractor shall promptly reimburse the Government for any progress payments heretofore made.
- 23. FALSE CLAIMS.** USVIEDA warrants that it shall not, with respect to this MOA, make or present any claim upon or against the Government, or any officer, department, board, commission, or other agency thereof, knowing such claims to be false, fictitious, or fraudulent. USVIEDA acknowledges that making such a false, fictitious, or fraudulent claim is an offense under U.S. Virgin Islands law.
- 24. NOTICE OF FEDERAL FUNDING.** USVIEDA acknowledges that this MOA is funded, in whole or in part, by federal funds. USVIEDA warrants that it shall not, with respect to this MOA, make or present any claim knowing such claim to be false, fictitious, or fraudulent. USVIEDA acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.
- 25. FORCE MAJEURE.** The Parties' performance under this MOA is subject to events or occurrences beyond their control such as, but not limited to, acts of God, war or threat of war, government retaliation against foreign or domestic enemies, terrorism, governmental regulation, civil disorder, pandemic, recognized health threats as determined by the Centers for Disease Control and Prevention (CDC) or local health agency, disaster, fire, strikes either real or threatened, curtailment of transportation facilities, or other similar cause beyond the control of the Parties making it from an economic, political, personal safety, or policy basis, illegal, inadvisable, or impossible to provide the Services outlined in this MOA. This MOA may be terminated, and/or specific



nonperformance or under-performance may be excused, without penalty or payment, except for those Services already provided, for any one or more of such reasons by written notice from the other party.

26. INTERPRETATION. Wherever the context so requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural and conversely. “Dollars” refer to the currency of the United States of America. The words “herein”, “hereof”, “hereunder” and other compounds of the word “here” shall refer to the entire MOA and not to any particular provision hereof. Unless expressly provided otherwise, all references in this MOA to “days” shall mean calendar, not business, days. References to “local” or “Territory” shall mean the U.S. Virgin Islands.

27. DISPUTE RESOLUTION. In the event of any controversy or claim arising out of or relating to this MOA, or the breach thereof, the Parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. If the Parties do not reach settlement within a period of 30 days, then either party may, by notice to the other party demand mediation. If settlement is not reached within 30 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this MOA may be settled in any court of competent jurisdiction in the U.S. Virgin Islands.

To the full extent permitted by law and subject to the policies of the Virgin Islands Department of Justice – Office of the Attorney General, the Parties hereto each irrevocably and specifically waive all rights to a trial by jury in any action or counterclaim whether based upon contract, tort, equitable claims, local or federal statutes, common law or otherwise arising out of or relating to this MOA.

28. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES. This MOA may be executed in any number of counterparts by wet ink, digital or electronic signature, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same MOA, and binding upon the Parties hereto.


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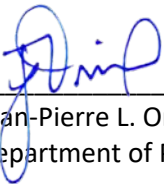


IN WITNESS WHEREOF, the Parties have hereunto set their hands on the dates below.

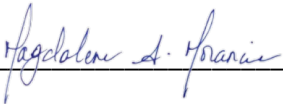
WITNESSES:

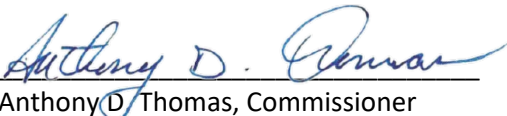
GOVERNMENT OF THE VIRGIN ISLANDS


Athneil J. Thomas
Deputy Commissioner
Department of Planning
and Natural Resources


Jean-Pierre L. Oriol, Commissioner
Department of Planning and Natural Resources

22-Apr-2022
Date

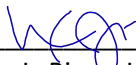

Athneil J. Thomas, Commissioner
Department of Planning
and Natural Resources


Anthony D. Thomas, Commissioner
Department of Property and Procurement

4/27/2022
Date

VIRGIN ISLANDS ECONOMIC DEVELOPMENT AUTHORITY


Kelly Thompson Hebbe


Wayne L. Biggs, Jr., Chief Executive Officer
Virgin Islands Economic Development Authority

04.22.2022
Date

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:  Date 4/27/22
Assistant Attorney General

PURCHASE ORDER NO. 779