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MEMORANDUM OF UNDERSTANDING BETWEEN THE VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS & THE VIRGIN ISLANDS WATER AND POWER AUTHORITY AND THE VIRGIN ISLANDS WASTE MANAGEMENT AUTHORITY THROUGH THE VIRGIN ISLANDS DEPARTMENT OF PROPERTY AND PROCUREMENT

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this 12th day of September, 2023 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, acting through the Department of Public Works (hereinafter “DPW”), the Virgin Islands Water and Power Authority (hereinafter “VIWAPA”), and the Virgin Islands Waste Management Authority (hereinafter “VIWMA”), each a “Party” or collectively “Parties,” through the Department of Property and Procurement.

WITNESSETH:

WHEREAS, DPW, pursuant to Title 3, Section 131 of the Virgin Islands Code is established as an Executive Department of the Government of the Virgin Islands; and

WHEREAS, pursuant to Title 3, Section 138(a) (4) and (5) respectively, of the Virgin Islands Code, DPW is responsible for;

- Participating in the planning and supervision of the construction of, and the repair and maintenance of all government buildings and grounds, public roads, highways, seawalls, wharves, seaways, public recreation areas, airports, and properties of like character; and
- the repair and maintaining other government-owned public utilities, and recommending methods for their maintenance; and

WHEREAS, pursuant to Title 20, Section 1(b) and (c) respectively of the Virgin Islands Code, DPW is also responsible for the;

- supervision, construction, reconstruction, repair, and maintenance of all public highways; and
- the construction and maintenance of all public highways, streets, bridges and guard rails shall in accordance with the standards, specifications, and safety requirements promulgated by the Bureau of Public Roads of the United States Department of Transportation (“DOT”) and in accordance with the standards and specifications as may be established for territorial roads that are not maintained by federal funds; and



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WHEREAS, VIWAPA is a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the Virgin Islands, created pursuant to Title 30, Section 103(a) of the Virgin Islands Code and pursuant to Title 30, Section 105(18) and (23) respectively, of the Virgin Islands Code, is responsible for:

- Constructing or placing any facilities and operating, maintaining and extending the same, across, in, over, under, through, or along any street, public highway, or any lands which may now or hereafter be the property of the Government of the Virgin Islands without obtaining any franchise or other permit therefor; provided, that the Authority shall obtain the consent of the Commissioner of Public Works with respect to construction affecting public lands and highways; and, provided, that the Authority shall restore any such street, highway, or lands, insofar as possible to their condition or state at the beginning of the work and shall not use the same in a manner unnecessarily to impair their usefulness;
- Participating in the programs of any Federal agencies in the fields of water and electric power supply (including water distillation) and distribution and, consistent with this chapter, to do any and all things necessary to secure participation in such programs and the cooperation of such agencies in achieving the policies and purposes of this chapter; and

WHEREAS, VIWMA is a non-profit, public body corporate and politic of the Government of the Virgin Islands, constituting an autonomous instrumentality of the Government of the Virgin Islands pursuant to Title 29, Section 496, responsible for providing environmentally sound management for the collection and disposal of solid waste, including operation and closure of landfills, and wastewater collection, transport, treatment and disposal in the Territory; and

WHEREAS, pursuant to Title 29, Section 496 (o), and (q) respectively of the Virgin Islands Code, VIWMA is responsible for:

- Acquiring, producing, developing, holding, using, transmitting, distributing, supplying, exchanging, selling, renting and otherwise disposing of solid waste management and wastewater system equipment, and/or such other items, supplies and services as the Authority shall deem necessary, proper, incidental, or desirable in connection with its activities under this chapter to construct or reconstruct, operate or manage, the systems of the Authority or any individual facility or facilities therein, and any additions, improvements and extensions thereto by contract or contracts, and/or under, through, or by means of its officers, agents and employees;
- Constructing or placing any facilities and operating, maintaining, and extending the same across, in, over, under, through or along any street, public highway or any lands which may, on the effective date of this chapter or thereafter, be the property of the Government of the Virgin Islands without obtaining any franchise or other permit or paying fees therefore; except, that the Authority shall obtain the consent of the Commissioner of Public Works with respect to construction affecting public lands and highways; and, provided further, that the Authority shall restore any such street, highway



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or lands, insofar as possible to their condition or state at the beginning of the work and shall not use the same in a manner unnecessarily to impair their usefulness;

WHEREAS, the Parties have a common interest in ensuring roads are paved to DOT standards following utility installations/repairs thereby avoiding the need to repave roadways more than once by sequencing projects; and

WHEREAS, the Parties desire to combine their efforts to ensure a coordinated approach to the quality of paving following underground utility installations/repairs, on public roads and highways in the Territory by entering into this MOU.

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

1. TERM AND EFFECTIVE DATE

This MOU shall be effective upon the date it is executed by the Commissioner of the Department of Property and Procurement and shall run for a period of ten (10) years from the effective date. Unless terminated in accordance with the provisions of Section 12 of this MOU, the MOU shall automatically renew for an additional five (5) year term, and thereafter for one final five (5) year term unless terminated by any of the Parties per Section 12.

2. COSTS

There shall be no exchange of funds between the Parties in fulfillment of their respective responsibilities under this MOU. The sources of funding for the road paving, as contemplated by this MOU, includes, but is not limited to Federal Emergency Management Agency (“FEMA”) funding. The obligated funds of projects falling under the scope of this MOU for paving of the roadways will be allocated from VIWAPA and VIWMA to DPW, and DPW will be responsible for coordinating underground projects, ensuring that roadways are paved to DOT standards in restoring roadways after utility and infrastructure projects, and avoiding the necessity to repave the same roads multiple times for various utility projects.

3. RESPONSIBILITIES/ TASKS

3.1 The Government of the Virgin Islands, by its Department of Public Works shall be responsible for:

- (a) Establishing a Unified Paving / Utility Coordination Office;
- (b) Conducting monthly utility coordination meetings;



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- (c) Providing any available existing roadway plans, as-builts, and existing surveys;
- (d) Providing master planning of all utility work within the public roadway ROW;
- (e) Designing and preparing final construction drawings;
- (f) Submitting final construction plans to utilities for review and approval;
- (g) Obtaining all required permits to perform the work related to unified paving;
 - NEPA approval, all necessary DPNR permits including but not limited to earth change, flood, and CZM, and pursuing and facilitating joint permitting where applicable;
- (h) Maintaining a database for all roadway as-built drawings
- (i) Implementing and operating Call Before You Dig/One Call;
 - Cost / fees associated with operation;
 - Conduct Training;
 - Provide staff to mark utilities;
- (j) Leading the coordination efforts with regards to providing mapping for decision making purposes and scheduling;
- (k) Compiling and analyzing the data collected under subsurface utility engineering, supporting the coordination of as-built drawings, and providing technical support for “call before you dig” in coordination with the LT. Governor’s Office GIS Division;
- (l) Performing Subsurface Utility Investigations in accordance with current American Society of Civil Engineers (ASCE) standard; and
- (m) Surveying and verifying existing public roadway right-of-way.

3.2 Virgin Islands Water and Power Authority shall be responsible for:

- (a) Participating in monthly utility coordination meetings;
- (b) Providing any available existing roadway plans, as-builts, and surveys;
- (c) Either, preparing and providing preliminary plans for all proposed utility work to include Preliminary Plan & Profile, Standard Details, Standard and Supplemental Specifications, and Preliminary Cost Estimate or providing support for the entire design process for projects being designed under one contract with multiple utilities;
- (d) Reviewing and providing comments on final construction plans;
- (e) Approving final construction plans;
- (f) Providing support throughout the permitting process; and
- (g) Maintenance and operation of utilities within DPW Right of Way (ROW).

3.3 Virgin Islands Waste Management Authority shall be responsible for:

- (a) Participating in monthly utility coordination meetings;
- (b) Providing any available existing roadway plans, as-builts, and surveys;
- (c) Either, preparing and providing preliminary plans for all proposed utility work to include Preliminary Plan & Profile, Standard Details, Standard and Supplemental Specifications, and Preliminary Cost Estimate or providing support for the entire design



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- process for projects being designed under one contract with multiple utilities;
- (d) Reviewing and providing comments on final construction plans;
 - (e) Approving final construction plans;
 - (f) Providing support throughout the permitting process; and
 - (g) Maintenance and operation of utilities within DPW's Right of Way (ROW).

4. DESIGNATED REPRESENTATIVE

Each Party shall designate a representative to oversee its responsibilities under this MOU. Within ten (10) business days of execution of this MOU, each party will deliver to the other Parties in writing or via email transmission, the name(s), title(s), mailing address(s), contact number(s) and email(s) of their respective designated representative. Further the Parties shall, throughout the duration of this MOU, if any of the named designated representative changes or additional representatives are required to be added, provide in the manner referenced herein to the other parties the contact information as outlined, of any replacement or additional designated representative.

5. LIABILITY OF OTHERS

Nothing in this MOU shall be construed to impose any liability upon either Party to persons, firms, associations, or corporations engaged by either Party as servants, agents, or independent contractors, or in any other capacity whatsoever, or make either Party liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of whatsoever nature, including but not limited to unemployment insurance and social security taxes for either Party its servants, agents or independent contractors.

6. ASSIGNMENT

Some of the responsibilities of the Parties as outlined in this MOU may from time to time be assigned to other entities. All such assignments shall be supported by Interagency Agreements or Contracts. Written notification of such assignment shall be provided to each Party of any assigned responsibilities before the commencement of any work.

7. INDEMNIFICATION

To the extent permitted by Virgin Islands law, VIWAPA and VIWMA agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by VIWAPA and VIWMA under this MOU and arising from any cause, except the sole negligence of Government.



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8. GOVERNING LAW

This MOU shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

9. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this MOU 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 MOU, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

10. ENTIRE AGREEMENT

This MOU constitutes the entire agreement of the Parties relating to the subject matter addressed in this agreement. This MOU supersedes all prior communications, MOUs, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

11. CONDITION PRECEDENT

This MOU shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

12. TERMINATION

Either Party will have the right to terminate this MOU with or without cause on ninety (90) days written notice to the other Party specifying the date of termination. Provided however that any Party terminating the MOU must continue to participate in any active and on-going projects until completed.

13. 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 MOU on account of race, creed, color, sex, religion, disability or national origin.



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14. CONFLICT OF INTEREST

Both Parties covenant that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this MOU.

15. NOTICE

Any notice required to be issued by the Terms of this MOU shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the Parties as follows:

LISA M. ALEJANDRO
Commissioner Designee
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas Virgin Islands 00802

DEREK GABRIEL
Commissioner
Department of Public Works
8244 Sub Base
St. Thomas, Virgin Islands 00802

ANDREW SMITH
Executive Director/CEO
Virgin Islands Water and Power Authority
P.O. Box 1450
St. Thomas, Virgin Islands 00804-1450

ROGER MERRITT
Executive Director
Virgin Islands Waste Management Authority
7410 Estate Bovoni Bay 2
Charlotte Amalie, VI 00802
Tel: 340-715-9100




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16. EXECUTION IN COUNTERPARTS


This MOU may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract and shall become effective.

IN WITNESS WHEREOF, the Parties have hereunto set their hands on the day and year first above written.

GOVERNMENT OF THE VIRGIN ISLANDS


Derek Gabriel, Commissioner
Department of Public Works


8/10/2023
Date


Andrew Smith, Executive Director/CEO
Virgin Islands Water and Power Authority

8.18.2023
Date



Roger Merritt, Executive Director
Virgin Islands Waste Management Authority

8/30/23
Date


Lisa M. Alejandro, Commissioner Designee
Department of Property and Procurement

9/12/2023
Date

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: /s/  Date 9/12/23
ASSISTANT ATTORNEY GENERAL