

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA"), which serves as a subgrant agreement, is entered into this 5th day of October 2015, in the Territory of the United States Virgin Islands, by and between the **VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS** ("VIDPW"), 6002 Anna's Hope, Christiansted, VI 00802, as Grant Recipient, and the **VIRGIN ISLANDS WASTE MANAGEMENT AUTHORITY** ("VIWMA"), 941-946 William's Delight, Frederiksted, VI 00840, as Subgrantee.

WITNESSETH:

WHEREAS, the Clean Water Act makes funding available to the Territory of the U.S. Virgin Islands ("Territory") through grants awarded and administered by the U.S. Environmental Protection Agency (the "EPA") for the financing of the construction of wastewater treatment facilities and related appurtenances and associated infrastructure, green infrastructure, nonpoint source projects, estuary projects and program administration;

WHEREAS, upon the awarding of the Fiscal Year ("FY") 2014 State and Tribal Assistance Grant to VIDPW under the Clean Water Act Title II Construction Grant Program, with VIWMA allotted a total in the amount of **Four Million Three Hundred Sixty-Five Thousand Dollars (\$4,365,00.00)** for the project entitled Construction Grant for WWT Works (Wastewater Capital Improvement Project) ("the Project");

WHEREAS, pursuant to the aforementioned grant agreement, the EPA has agreed, on a reimbursement basis, to cost-share one hundred percent (100%) of all approved budget costs incurred, up to and not exceeding the total amount of the grant as set forth above;

WHEREAS, the primary stated purposes of the grant agreement are to preserve and create jobs and promote economic recovery through the investment in infrastructure projects that will improve water quality and provide long term economic benefits;

WHEREAS, the VIDPW is an executive department in the Government of the Virgin Islands charged with the general statutory authority to participate in the planning of, supervise the construction of, and repair and maintain government properties and capital improvements, including utilities and other public works projects for the Territory;

WHEREAS, the 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, one of the stated purposes of which is to provide environmentally sound management for the collection, transport, treatment and disposal of wastewater in the Territory;

WHEREAS, to upgrade the infrastructure and improve the operating efficiency of the Territory's wastewater facilities, and to carry out the grant requirements in furtherance of the foregoing grant program goals, VIDPW wishes to enter into a collaborative venture with VIWMA, whereby VIDPW will provide the grant funding and VIWMA will manage the project

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work, oversee procurement, expenditures and accounting, and ensure compliance with applicable local and federal laws and regulations; and

WHEREAS, the EPA requires VIDPW and VIWMA to enter into this MOA as a prerequisite for and in order to facilitate the awarding of the EPA FY 2014 State and Tribal Assistance Grant to VIDPW under the Clean Water Act Title II Construction Grant Program.

NOW, THEREFORE, in consideration of the above, and the mutual covenants and agreements hereinafter contained, and intending to be legally bound by this written instrument, the parties agree as follows:

1. TERM

This MOA shall commence upon the execution of the parties and final approval and execution by the Governor of the Virgin Islands. The term of this MOA, which serves as a subgrant agreement, shall be from the date of the Governor's execution through September 30, 2020.

2. DUTIES AND OBLIGATIONS OF THE PARTIES

During the term of this MOA, which serves as a subgrant agreement, the parties shall provide the following assistance and services to each other in furtherance of the goals set forth above, and each shall have the following duties and obligations hereunder.

(a) DUTIES AND OBLIGATIONS OF VIWMA

VIWMA shall provide the following services hereunder to carry out the Project. All procurement shall be in accordance with VIWMA's standard procurement policies and procedures and shall comply with all terms of the grant, as well as all applicable provisions of local and federal laws. VIWMA shall initiate the procurement process and subsequently enter into contracts for the required services; and the agreements shall include the Buy American provisions as set forth in the Terms and Conditions of each VIDPW grant agreement.

(1) Scope of Work

The work hereunder shall consist of the following task ("Scope of Work"):

Project Description:

- | | | |
|----|---|--------------|
| 1. | St. Croix Small Pump Stations | \$ 831,392. |
| 2. | St. Thomas Small Pump Stations, Phase 1 & 2 | \$ 965,608. |
| 3. | George Simmons WWTP Upgrades | \$ 385,500 |
| 4. | Krause Lagoon Interceptor Rehabilitation, Phase 2 | \$2,182,500. |

GC050DPW15

TOTAL..... \$4,365,000.

(2) Permits

VIWMA shall ensure that the Project complies with all applicable permitting requirements, including, without limitation, any permits or approvals required from the Department of Planning and Natural Resources (“DPNR”).

(3) Quarterly and Other Reporting Requirements

VIWMA shall comply with all grant reporting requirements of VIDPW, and shall generally provide VIDPW with information and supporting documentation of the status of the Project and use of all funds upon request to ensure full compliance with the grant requirements, including, without limitation, all documentary requirements for obtaining reimbursement of funds expended under the grant.

(4) Grant Acknowledgement Language

Any published literature regarding the Project, including, without limitation, all documents and reports prepared for publication or distribution, shall include the following acknowledgment language: “The funds for this project were made available in part by a grant from the U.S. Environmental Protection Agency under the Clean Water Act Construction Grant Award for FY 2014.”

(b) DUTIES AND OBLIGATIONS OF VIDPW

(1) Project Funds

VIDPW shall provide to VIWMA the amount of **Four Million Three Hundred Sixty-Five Thousand Dollars (\$4,365,00.00)** to carry out the Scope of Work hereunder in accordance with the terms of the grant and this MOA, which serves as a subgrant agreement (the “Project Funds”). Subject to the other terms and conditions of this MOA, which serves as a subgrant agreement, VIDPW shall disburse Project Funds to reimburse VIWMA for expenditures pursuant to the terms and conditions of the grant.

(2) Technical Assistance and Monitoring

VIDPW shall provide technical assistance as needed and shall monitor the work performed by VIWMA hereunder.

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3. DEADLINES TO EXPEND PROJECT FUNDS:

As a condition of payment hereunder, VIWMA shall expend the Project Funds for EPA Clean Water Act Construction Grant Award for FY 2014 by **September 30, 2020**. For purposes of this provision, time is of the essence, and any portion of the Project Funds not expended by the foregoing deadline will not be available for use on the Project and no other funding shall be due from VIDPW hereunder.

4. OTHER TERMS AND CONDITIONS OF FUNDING

(a) Approval of the Governor and VIWMA Board; Availability of Funds

This MOA, which serves as a subgrant agreement, is subject to approval and execution of the Governor of the Virgin Islands, the approval or ratification by the VIWMA Board, and is subject to the availability and appropriation of funds.

(b) Special Conditions

As a condition of funding hereunder, VIWMA shall comply with the Administrative and Programmatic Terms and Conditions for the grants as well as all applicable requirements of local and federal laws.

(c) Reporting and Recordkeeping Requirements

VIWMA shall also ensure that all contractors, subcontractors, or grant subrecipients working on the Project comply with reporting and recordkeeping requirements by making such compliances an express requirement of any contract or subcontract hereunder, including, without limitation, the items listed in (1) through (6) below; provided, however, that in the event of a conflict between the provisions of this MOA and the Administrative and Programmatic Terms and Conditions of the grant, the Administrative and Programmatic Terms and Conditions as well as provisions of local and federal law shall control.

(1) Access to Project Records

To help ensure full compliance with the transparency and accountability requirements, VIWMA shall provide reasonable access to EPA, VIDPW, and any of their authorized representatives, to review project accomplishments and management controls for the Project, and shall require its contractors or subcontractors on the Project to provide such access as well.

GC050DPW15

(2) Buy American Provisions

Purchase of any iron, steel or manufactured goods made with Project Funds must comply with the Buy American provisions, if applicable.

(3) Segregation of Records Generally

To ensure compliance with accountability and transparency requirements, VIWMA shall segregate the Project Funds from other funds, shall keep separate and accurate records of all Project Funds, and shall require all contractors and subcontractors on the Project to do the same.

(4) Payroll and Basic Records

VIWMA shall keep documented, precise records of time and money expended on the Project to ensure compliance with accountability and transparency requirements. VIWMA shall maintain its payroll and basic records relating to the Project during the course of the work and shall preserve them for a period of three years thereafter, and shall require all contractors and subcontractors on the Project to do the same.

(5) Davis-Bacon Prevailing Wage Requirements

VIWMA shall ensure compliance, to the extent applicable, with the Davis-Bacon Act, and shall require all contractors and subcontractors on the Project to do the same.

(6) Environmental and Other Conditions

VIWMA acknowledges and agrees that the Project will not threaten a violation of applicable statutory, or permit requirements for environmental, safety and health, including requirements of EPA or any Executive Order of the President of the United States or the Governor of the Virgin Islands; require siting and construction of major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators) except as provided in the Scope of Work; or unlawfully disturb hazardous substances, pollutants, contaminants, or Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”)-excluded petroleum and natural gas products that pre-exist in the environment such that there would be uncontrolled or unpermitted releases. VIWMA shall ensure that work on the Project complies with all applicable environmental laws, rules and regulations, whether federal or local, including, without limitation, the

provisions of Chapter 55 of Title 42 of the United States Code (the National Environmental Policy Act, known as “NEPA”).

(d) Environmental Protection Agency Subgrant Requirements

VIDPW acknowledges and agrees to comply with the requirements established under the Provisions of 40 CFR 31.37-Subgrants and any other applicable Federal statutes or regulations imposing requirements for the Grantee. VIWMA acknowledges and agrees to comply with the requirements established under the provisions of 40 CFR 31.37 and all other Federal statutes and regulations applicable to the VIWMA. The parties agree that pursuant to 40 CFR 31.37 (a)(3) they will ensure that a provision for compliance with 40 CFR 31.42 (retention of records) is made part of every cost reimbursement subgrant.

(e) Compliance with Subaward Policy Administrative Terms and Conditions

VIDPW and VIWMA agree to comply with all of the requirements set forth in the Subaward Policy Administrative Term and Conditions of each Grantee’s grant agreement.

5. COORDINATORS

To ensure the continuity of the Project and compliance with the terms and conditions hereof, each party shall designate an individual to serve as coordinator hereunder, and may designate a substitute coordinator from time to time at its option by providing notice hereunder to the other party. The initial coordinators hereunder shall be as follows:

For VIDPW: Jomo McClean, P.E.
Design Program Manager
V.I. Department of Public Works
8244 Subbase
St. Thomas, VI 00802

For VIWMA: Laurie Williams, P.E.
Director of Engineering
Virgin Islands Waste Management Authority
941-946 William’s Delight
Frederiksted, VI 00840

6. CONFLICTS OF INTEREST

VIWMA shall maintain a written code or standard of conduct, which shall govern the performance of officers, employees, or agents engaged in the award and administration of

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contracts supported by federal funds. VIWMA shall establish safeguards to prohibit its employees from using their position for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or with whom they have family, business, or other ties.

In the performance of this MOA, which serves as a subgrant agreement, the parties shall at all times comply with and abide by all applicable provisions of Virgin Islands and federal laws governing conflicts of interest, including, without limitation, the provisions of sections 1100 through 1108 of Title 3, Chapter 37 of the Virgin Islands Code as well as Section 666 of Title 18 of the United States Code.

VIWMA shall require the following conflict of interest clause in all contracts or subcontracts for the Project:

- “(a) Contractor 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 performance of services it is required to perform hereunder.
- (b) Contractor further covenants that it is:
- (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive, or judicial branch of the Government or any agency, board, commission, or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
 - (2) a territorial officer or employee and as such, has:
 - (i) familiarized himself or herself with the provisions of Title 3, Chapter 37, Virgin Islands Code pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - (ii) not made, negotiated or influenced this contract, in its official capacity; and
 - (iii) no financial interest in the contract as that term is defined in section 1101 (1) of said Code Chapter.”

7. NOTICE

Any notice required or permitted to be given pursuant to this Agreement shall be hand delivered or sent by registered or certified mail, return receipt requested, to the following individuals or authorized successor at the addresses shown below:

To VIDPW: Gustav James, P.E.
Commissioner
Department of Public Works
8244 Subbase
St. Thomas, VI 00802

GC050DPW15

To VIWMA: May Adams Cornwall, P.E.
Executive Director
Virgin Islands Waste Management Authority
941-946 William's Delight
Christiansted, VI 00840

With a copy to: Randolph N. Bennett
Commissioner
Department of Property & Procurement
No. 1 Subbase, 3rd Floor
St. Thomas, VI 00802

8. LIABILITY

Nothing in this agreement shall be construed to impose any liability upon either party or the Government of the Virgin Islands generally to persons, firms, associations, or corporations engaged by the parties as servants, agents, or independent contractors, or in any other capacity whatsoever, or to make the same liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations of the parties, or to excuse or relieve payment by any contractor, subcontractor, or agent thereof for any taxes or fees of whatsoever nature, including, but not limited to, unemployment insurance, social security taxes, licensing fees, gross receipts taxes and other charges, which may be due in connection with the Project.

9. ASSIGNMENT

No party may assign this MOA, which serves as a subgrant agreement, without the written consent of the other party. The parties acknowledge and agree, however, that VIWMA may retain one or more contractors or subcontractors in accordance with the terms hereof to perform work on the Project, provided that all such contractors and subcontractors shall be contractually obligated to comply with all applicable laws, and other federal laws or regulations relating to federal grant funding as well as the provisions of other federal and local laws, rules or regulations as may be applicable to work performed on the Project, and as further set forth herein.

10. GOVERNING LAW

This agreement shall be governed by the laws of the United States Virgin Islands and Jurisdiction and venue are exclusive in the United States Virgin Islands.

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11. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition, or provision of this MOA, which serves as a subgrant agreement, shall be valid or of any force or effect unless made in writing, signed by the party to be charged or against whom any waiver is to be enforced, or its duly authorized representative, 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, which serves as a subgrant agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

12. ENTIRE AGREEMENT

This MOA, which serves as a subgrant agreement, and all exhibits incorporated herein by reference, constitutes the entire agreement of the parties with respect to the subject matter hereof, and all prior understandings or communications, written or oral, with respect to the Project are of no effect.

13. RIGHT TO WITHHOLD

If work under this MOA, which serves as a subgrant agreement, is not performed in accordance with the terms hereof, VIDPW shall have the right to withhold out of any payment due to VIWMA, such sums as VIDPW may deem ample to protect it against loss or to assure payment of claims arising therefrom, and at its option, VIDPW, in conformity with all grant requirements, may apply such sums in such manner as VIDPW may deem proper to secure itself or to satisfy such claims. VIDPW shall immediately notify VIWMA in writing in the event that it elects to exercise its right to withhold. No such withholding or application shall be made by the VIDPW if and while the VIWMA gives satisfactory assurance to the VIDPW that such claims will be paid by the VIWMA or its insurance carrier, if applicable, in the event that such contest is not successful.

14. TERMINATION

Either party shall have the right to terminate this MOA, which serves as a subgrant agreement, for cause upon 30 days written notice to the other party specifying the date of termination and the reason for termination.

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15. EFFECTIVE DATE

The effective date of this MOA, which serves as a subgrant agreement, shall be the date it is executed by the Governor and approved or ratified by the VIWMA Governing Board, whichever occurs last.

16. DEBARMENT

By execution of this MOA, which serves as a subgrant agreement, the parties certify that they are eligible to receive grant awards using federally appropriated funds that they have not been suspended or debarred from entering into contracts with any federal agency. VIWMA shall include the foregoing certification provision in each of its contracts and shall require the same in any subcontracts hereunder and shall furnish its contractors and subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event any contractor or subcontractor misrepresents its eligibility to receive proceeds of grant awards using federal funds, the parties agree that it shall not be entitled to payment for any work performed on the Project and shall promptly reimburse the Government of the Virgin Islands, VIDPW or VIWMA, as the case may be, for any progress payments theretofore made. If, during the term of this Agreement, any party or the contractor or subcontractor of any shall then become ineligible to receive the proceeds of grant awards using federal funds, said party, contractor or subcontractor shall not be entitled to payment for any work or purchase in connection with the Project after the effective date of their ineligibility.

17. NOTICE OF FEDERAL FUNDING

The parties acknowledge that this MOA, which serves as a subgrant agreement is funded in whole or in part, by federal funds. The parties warrant that they shall not, with respect to the MOA, which serves as a subgrant agreement, make or present any claim knowing such claim to be false, fictitious, or fraudulent. The parties acknowledge that making such a false, fictitious, or fraudulent claim is a federal offense. VIWMA shall require the foregoing warranty in all contracts or subcontracts to the Project.

18. FALSE CLAIMS

The parties warrant that they shall not, with respect to this MOA, which serves as a subgrant agreement, make or present any claim upon or against the federal government or any agency or subdivision thereof, or upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. The parties acknowledge that making such a false, fictitious, or fraudulent claim is an offense under federal and Virgin Islands Laws.

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VIWMA shall require the foregoing warranty in all contracts or subcontracts relating to the Project.

19. 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, which serves as a subgrant agreement, or the Project generally on account of race, creed, color, sex, sexual orientation, religion, disability or national origin. VIWMA shall require the foregoing language in all contracts and subcontracts relating to the Project.

20. LICENSURE

VIWMA shall require the following provision in all contracts and subcontracts relating to the Project:

“The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, whether permanent, temporary or otherwise, as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professionals and occupations.”

21. COOPERATION

The parties agree to cooperate with each other in the performance of this MOA, which serves as a subgrant agreement, and negotiation of any modifications thereto in order to achieve and maintain timely compliance with all applicable laws and requirements, and to ensure the success of the Project and fulfilment of Project goals, including the deadlines for obligating and expending the Project funds, as set forth above. Any disputes or disagreements regarding interpretation and performances of this MOA, which serves as a subgrant agreement, shall be resolved internally among the parties hereto as soon as practicable through good faith negotiations, and any issues which the parties are unable to resolve shall be submitted promptly to the Governor for a final determination which shall be binding.

22. CONDITION PRECEDENT

This agreement shall be conditioned upon the awarding of the EPA FY 2014 State and Tribal Assistance Grant to VIDPW on behalf of the Government of the Virgin Islands under the Clean Water Act Title II Construction Grant Program.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the dates indicated below.

WITNESSES:

Marsha Stephens

**VIRGIN ISLANDS DEPARTMENT OF
PUBLIC WORKS**

Gustay James 9/23/2015
Gustay James, P.E. Date
Commissioner

May Adams Cornwall 9/23/15

**VIRGIN ISLANDS WASTE
MANAGEMENT AUTHORITY**

May Adams Cornwall 9/23/15
May Adams Cornwall, P.E. Date
Executive Director

Norbert Rosado 9/24/15

Norbert Rosado 9/24/15
Norbert Rosado Date
Interim Secretary

Randolph N. Bennett

**VIRGIN ISLANDS DEPARTMENT OF
PROPERTY & PROCUREMENT**

Randolph N. Bennett 9/25/15
Randolph N. Bennett Date
Commissioner

APPROVED:

Kenneth E. Mapp
Kenneth E. Mapp
Governor of the Virgin Islands

Date: 10-05-15

Approved for Legal Sufficiency, Department of Justice

By: Royette Lumley, AAG

Date: 9/25/15