

## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA"), which serves as a subgrant agreement, is entered into this 21st day of August 2022, in the Territory of the United States Virgin Islands, between the **VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS** ("VIDPW") at 6002 Anna's Hope, Christiansted, VI 00802, as Grant Recipient, and the **VIRGIN ISLANDS WASTE MANAGEMENT AUTHORITY** ("VIWMA") at 6196 Estate Glynn, Christiansted, VI 00850, 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**, VIWMA's receipt of grant funding hereunder shall be conditioned upon and subject to VIWMA's compliance with all applicable grant terms and conditions set forth in the EPA's Administrative and Programmatic Terms and Conditions for what may be set for as Grant Number **C78003401** and its amendments which is attached hereto as **Exhibit 1** and incorporated by reference;

**WHEREAS** the awarding of Fiscal Year (FY) 2011 State and Tribal Assistance Grant to VIDPW under the Clean Water Act Title II Construction Grant Program in which VIWMA was allotted a total in the amount of **Four Million Five Hundred and Eighty-One Thousand Dollars (\$4,581,000.00)** 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 repair, replace, and upgrade the Territory's Wastewater systems, 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, supervising the construction of, and repairing and maintaining 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; and

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

**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 which serves as the sub-award agreements shall be retroactive and become effective for the Term set out herein upon the execution of the parties and final approval and execution by the Governor of the Virgin Islands.

EPA Clean Water Act Construction Grant Award for FY 2011

The term of this MOA, which serves as a subgrant agreement, shall be from October 1, 2017, through September 30, 2022.

**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's grant agreement.

**(1) Scope of Work**

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

Project Description:

1. Brass View WWTP Upgrades	\$ 881,000.00
2. Airport Force Main Rehab	\$ 906,038.46
3. Southwest Interceptor	\$ 91,178.80
<b>TOTAL</b>	<b>\$ 1,878,217.26</b>



**(2) Compliance with Administrative and Programmatic Terms and Conditions**

VIWMA's receipt of grant funding hereunder shall be conditioned upon and subject to VIWMA's compliance with all applicable grant terms and conditions set forth in the EPA's Administrative and Programmatic Terms and Conditions for what may be set forth as Grant Number C-78003401 and its amendments which is attached hereto as Exhibit I and incorporated by reference.

**(3) 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").

**(4) 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. The reports are due on the 30<sup>th</sup> day of every month to include progress, funds spent on each project, and expected completion dates for the project to date.

**(5) 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 2011, award number **C78003401**."

**(b) DUTIES AND OBLIGATIONS OF VIDPW**

**(1) Project Funds**

VIDPW shall provide to VIWMA the amount of **One Million Eight Hundred Seventy Eight Thousand Two Hundred and Seventeen Dollars and Twenty Four Cents (\$1,878,217.24)** 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.



### **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 2011 by **September 30, 2022**. 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.

##### **(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 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:

<b>For VIDPW:</b>	Jomo McClean, P.E. Design Program Manager V.I. Department of Public Works 8244 Subbase St. Thomas, VI 00802
<b>For VIWMA:</b>	Elouise S. Brown Territorial Grants Administrator Virgin Islands Waste Management Authority 6196 Estate Glynn Christiansted, VI 00850

**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 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 always 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:** Derek A. Gabriel  
 Commissioner  
 Department of Public Works  
 8244 Subbase  
 St. Thomas, VI 00802

**To VIWMA:** Roger E. Merritt, Jr  
 Executive Director  
 Virgin Islands Waste Management Authority  
 6196 Estate Glynn  
 Kingshill, VI 00850

**With a copy to** Anthony D. Thomas  
 Commissioner  
 Department of Property & Procurement  
 8201 Subbase, Suite #4  
 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 with jurisdiction and venue exclusively in the United States Virgin Islands.

**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, constitute 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.

#### **15. EFFECTIVE DATE**

The effective date of this MOA, which serves as a subgrant agreement shall be retroactive and become effective for the term set out herein upon execution of the parties and final approval by the Governor.

#### **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. 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 the 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. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES**

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

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

**WITNESSES:**



**VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS**

  
Derek A. Gabriel  
Commissioner  
6/1/2022  
Date

**VIRGIN ISLANDS WASTE MANAGEMENT AUTHORITY**

Alice Krall 5/25/2022

  
Roger E. Merritt, Jr.  
Executive Director  
5/25/22  
Date

Jwendolyn A. Kelly 5/27/2022

  
Keith Richards  
VIWMA Board Chairman  
5/27/22  
Date

**VIRGIN ISLANDS DEPARTMENT OF PROPERTY & PROCUREMENT**



  
Anthony D. Thomas  
Commissioner  
7/21/2022  
Date

**APPROVED:**

  
Albert Bryan, Jr.  
Governor of the Virgin Islands

Date: 5/21/22

Approved for Legal Sufficiency, Department of Justice

By:   
Assistant Attorney General  
Date: 7/25/2022



## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT (“MOA”)** which serves as a subgrant agreement entered into as of the 17th. day of September, 2012, in the Territory of the Virgin Islands, by and between the **VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS (“VIDPW”)**, 8244 Subbase, St. Thomas, Virgin Islands 00802, as **Grant Recipient**, and the **VIRGIN ISLANDS WASTE MANAGEMENT AUTHORITY (“VIWMA”)**, No.1 La Grande Princesse, Suite BL-1, Christiansted, St. Croix, Virgin Islands 00820 as **Subgrantee**.

### WITNESSETH

**WHEREAS**, the Clean Water Act makes funding available in the Territory of the U.S. Virgin Islands 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; and

**WHEREAS**, on December 30, 2011, the VIDPW applied for an Assistance Grant from the United States acting through the EPA in the sum of **Four Million Five Hundred and Eighty One Thousand Dollars (\$4,581,000.00)** for the project entitled “Construction Grants for Wastewater Projects” [Wastewater Capital Improvement Projects] (“the Projects”); and

**WHEREAS**, pursuant to the aforementioned grant application, the EPA may agree, 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 application as set forth above; and

**WHEREAS**, the primary stated purposes of the grant application are to repair, replace and upgrade the Territory’s Wastewater systems, to preserve and create jobs and promote economic recovery through the investment in infrastructure projects that will improve water quality and will provide long term economic benefits; and

**WHEREAS**, the VIDPW is in 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; and

**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 wastewater collection, transportation, treatment and disposal in the Territory; and

**WHEREAS**, in order to upgrade the infrastructure and improve the operating efficiency of the Territory’s wastewater facilities, and to carry out the EPA grant requirements in furtherance of

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the foregoing grant program goals, once approved, the VIDPW wishes to enter into a collaborative venture with the VIWMA whereby the VIDPW will provide the grant funding and the VIWMA will manage the project work, oversee procurement, expenditures, and accounting, and ensure compliance with applicable local and federal laws and regulations.

**NOW THEREFORE**, in consideration of the above recitals, 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, which serves as a subgrant agreement shall commence upon execution by the Parties, final approval and execution by the Governor of the Virgin Islands, and is also contingent upon grant approval by the EPA. The term of this MOA, which serves as a subgrant agreement shall be for a period from the date of the Governor's execution of same through **September 30, 2017**.

**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**

The VIWMA shall provide the following services hereunder to carry out the Projects. All procurement shall be in accordance with the 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. The VIWMA shall initiate the procurement process and subsequently enter into contracts for the required services, which agreements shall include a **Buy American** provision as may be set forth by the EPA in the Terms and Conditions of the VIDPW's grant agreement.

**(1) Scope of Work**

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

Project Description:

- |                                   |                 |
|-----------------------------------|-----------------|
| 1. Krause Lagoon Interceptor- STX | \$1,600,000.00  |
| 2. Southwest Interceptor- STX     | \$1,300,000.003 |

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- |   |              |
|---|--------------|
| 3. Airport Force Maim Rehabilitation- STT | \$600,000.00 |
| 4. Brass View WWTP- STT                   | \$800,000.00 |
| 5. Cactus Hill Sewer Line- STJ            | \$281,000.00 |

**(2) Compliance with Administrative and Programmatic Terms and Conditions**

Receipt of grant funding hereunder shall be conditioned upon and subject to compliance will applicable grant terms and conditions set forth in the EPA's Administrative and Programmatic Terms and Conditions for what may be set forth as Grant Number **C-78003401**, a copy of which application is attached hereto and incorporated herein by reference as **Exhibit 1**.

**(3) Permits**

The VIWMA shall ensure that the Project complies with all applicable permitting requirements, including without limitation any permits or approvals required from the DPNR.

**(4) Monthly and other Reporting Requirements**

The VIWMA shall comply with all grant reporting requirements of the VIDPW, and shall generally provide the VIDPW with information and supporting documentation of the status of the Projects 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.

**(5) 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; Grant Award Number **C-78003401**".

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**(b) DUTIES AND OBLIGATIONS OF VIDPW**

**(1) Project Funds**

The VIDPW shall provide to VIWMA the sum of Four **Million, Five Hundred Eighty One Thousand Dollars (\$4,581,000.00)** to carry out the Scope of Work hereunder in accordance with the terms of the grant, once received, 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, the VIDPW shall disburse Project Funds to reimburse the VIWMA for expenditures pursuant to the terms and conditions of the grant, once received.

**(2) Technical Assistance and Monitoring**

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

**3. DEADLINES TO EXPEND PROJECT FUNDS:**

As a condition of payment hereunder, the VIWMA shall expend the approved Project Funds by September 30, 2017. For purposes of this provision, time is of the essence, and once approved, 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. This MOA, which serves as a subgrant agreement is further subject to approval or ratification by the VIWMA Board. This MOA, which serves as a subgrant agreement is also subject to the availability and appropriation of funds.

**(b) Special Conditions**

As a condition of funding hereunder, the VIWMA shall comply with all Administrative and Programmatic Terms and Conditions for the grant once approved, and generally as set forth in **Exhibit 1**, as well as all applicable requirements of local and federal laws.

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**(c) Reporting and Recordkeeping Requirements**

The VIWMA shall also ensure that all contractors, subcontractors, or grant sub-recipients working on the Projects 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, which serves as a subgrant agreement and the Administrative and Programmatic Terms and Conditions of the grant, once awarded, the provision of the grant shall control.

**(1) Access to Project Records**

To help ensure full compliance with the transparency and accountability requirements, the VIWMA shall provide reasonable access to the EPA, to the 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.

**(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, the 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**

The VIWMA shall keep documented, precise records of time and money expended on the Project. To ensure compliance with accountability and transparency requirements, the VIWMA shall maintain its payroll and basic records relating to the Projects during the course of the work and shall preserve them for a period of three (3) years thereafter, and shall require all contractors and subcontractors on the Projects to do the same.

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## **(5) Davis-Bacon Prevailing Wage Requirements**

Memorandum of Agreement  
Between VIDPW & VIWMA  
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The 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**

The 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 the 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 CERCLA-excluded petroleum and natural gas products that pre-exist in the environment such that there would be uncontrolled or unpermitted releases. The 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 ("NEPA")].

### **(d) Environmental Protection Agency Subgrant Requirements**

The 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. The 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 Condition**

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

## **5. COORDINATORS**

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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  
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Design Program Manager  
V.I. Department of Public Works  
8244 Subbase  
St. Thomas, Virgin Islands 00802

For VIWMA: Mr. Laurie Williams, P.E.  
Director of Engineering  
Virgin Islands Waste Management Authority  
941-946 Estate Williams Delight  
Frederiksted, V.I. 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 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.

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(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:

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(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;

(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: Mr. Darryl A. Smalls, P.E.  
Commissioner  
Department of Public Works  
8244 Subbase  
St. Thomas, Virgin Islands 00802

To VIWMA: Ms. May Adams Cornwall  
Executive Director  
Virgin Islands Waste Management Authority  
No. 1 La Grande Princesse, Suite BL-1  
Christiansted, St. Croix, Virgin Islands 00820

With a copy to: Lynn A. Millin Maduro, Esq.  
Commissioner  
Department of Property & Procurement  
No. 1 Subbase, 3<sup>rd</sup> Floor

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## **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 Projects.

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## **9. ASSIGNMENT**

No party may assign this MOA, which serve 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 Projects, 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 Projects, 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.

## **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 of 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 may, in conformity with all grant

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requirements, 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 thirty (30) days written notice to the other party specifying the date of termination and the reason for termination.

## **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

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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

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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 Projects.

### **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. VIWMA shall require the foregoing warranty in all contracts or subcontracts relating to the Projects.

### **19. NON-DISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of, or be

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subject to discrimination in the performance of this MOA, which serves as a subgrant agreement, or the Projects 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 Projects.

## 20. LICENSURE

VIWMA shall require the following provision in all contracts and subcontracts relating to the Projects.

“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 Projects and fulfilment of Projects goals, including the deadlines for obligating and expending the Project funds, as set forth above. Any disputes or disagreements regarding

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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.

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

WITNESSES:



**VIRGIN ISLANDS DEPARTMENT OF  
PUBLIC WORKS**

  
\_\_\_\_\_  
Darryl A. Smalls, PE  
Commissioner

  
Date

**VIRGIN ISLANDS WASTE  
MANAGEMENT AUTHORITY**

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[Signature] 9/17/12

[Signature]

Lynn Hill

[Signature]  
May Adams Cornwall  
Executive Director

9/17/12  
Date

[Signature]  
Darryl A. Smalls, PE  
Chairman

9/17/12  
Date

**GOVERNMENT OF THE VIRGIN ISLANDS  
DEPT. OF PROPERTY & PROCUREMENT**

[Signature]  
Lynn A. Millin Maduro, Esq.  
Commissioner

9/17/12  
Date

**APPROVED:**

[Signature]  
John F. deJongh, Jr.  
Governor of the Virgin Islands

Date: 9/17/12

Approved for Legal Sufficiency, Department of Justice

By: [Signature]

Date: \_\_\_\_\_

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