



MOA between DHS and VIWAPA - Amendment 1



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AMENDMENT No. 1 OF MEMORANDUM OF AGREEMENT

THIS AMENDMENT made as of the 6th day of July, 2023 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands **Department of Property and Procurement** on behalf of the **Department of Human Services** (hereinafter referred to as “**Government**”) and the **Virgin Islands Water and Power Authority** (hereinafter referred to as “**VIWAPA**”).

Both parties witness to being duly authorized to execute this agreement and will attest accordingly when and where necessary.

WITNESSETH

WHEREAS, pursuant to Memorandum of Agreement No. G082DHST21 approved by the Governor on September 15, 2021, (hereinafter referred to as the “MOA”), the Government contracted with VIWAPA to provide electric service to clients through the Energy Crisis Assistance Program (ECAP); and

WHEREAS, the Contract expires pursuant to its terms on **January 31, 2024**; and

WHEREAS, the parties desire to amend the Contract, to change the Scope of Services in Addendum I to include potable water service and to increase the compensation by One Hundred Ninety-Five Thousand One Hundred Forty-Six and 00/100 Dollars (\$195,146.00).

NOW THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. Paragraph No. 3 – Compensation is hereby amended to increase the compensation by One Hundred Ninety-Five Thousand One Hundred Forty-Six and 00/100 Dollars (\$195,146.00) for a total amount not to exceed Four Million Six Hundred Ninety-Five Thousand One Hundred Forty-Six and 00/100 Dollars (\$4,695,146.00) by deleting all of the existing language contained therein and replacing it with new language as follows:

“The Government, in consideration of the satisfactory performance of the services described in the First Amended Addendum I (Amended Scope of Services) agrees to pay VIWAPA the sum not to exceed Four Million Six Hundred Ninety-Five Thousand One Hundred Forty-Six and 00/100 Dollars (\$4,695,146.00) in accordance with the provisions set forth in First Amended Addendum II (Amended Compensation) attached hereto and made a part of this MOA.”

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2. Addenda I and II of the Contract are revised by deleting the terms contained therein and inserting in lieu thereof all of the terms contained in the new First Amended Addendum I and First Amended Addendum II attached hereto as Exhibit "A".
3. This Amendment is subject to the approval of the Governor of the Virgin Islands and to the appropriation and availability of funds.
4. Except as expressly amended in this Amendment, all terms of the MOA remain in full force and effect.

5. FASCIMILE, 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 have hereunto set their hands on the day and year first above written.

GOVERNMENT OF THE VIRGIN ISLANDS



Kimberley Causey Gomez, Commissioner
Department of Department of Human Services


05.22.2023
Date



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

6/8/2023
Date


CONTRACTOR



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

5.3.2023
Date

APPROVED:



Honorable Albert Bryan Jr.
GOVERNOR OF THE VIRGIN
ISLANDS

Date: 7/6/23

Initials: ALS



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APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: Carol E. McDonald Date 6/9/2023
Assistant Attorney General

PURCHASE ORDER NO. _____



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MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA") is made this 15th day of September, 2021 in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Human Services (hereinafter referred to as "Government") and the **Virgin Islands Water and Power Authority** (hereinafter referred to as "VIWAPA").

WITNESSETH:

WHEREAS, the Government operates an Energy Crisis Assistance Program ("ECAP") through its Department of Human Services – Division of Family Assistance (DHS/DFA) where eligible clients receive financial assistance for payment of their electric bills every other month;

WHEREAS, the Government seeks to collaborate with VIWAPA to provide electric services to clients authorized to participate in DHS/DFA's ECAP, which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, VIWAPA, as the Virgin Islands' public utility for water and power, was selected in accordance with 31 V.I.C. § 239(a)(8); and

WHEREAS, VIWAPA represents that it is willing and capable of providing such services.

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. SERVICES

VIWAPA will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this MOA.

2. TERM

The term of this MOA shall be from **February 1, 2021 to January 31, 2024**. Upon the date of execution of this MOA by the Governor of the U.S. Virgin Islands, this MOA shall become effective for the Term set out herein. The Government in its sole discretion, shall have the option to renew this MOA for two (2) additional one year periods subject to the same terms noted herein, by providing VIWAPA with sixty (60) days written notice of the Government's election to renew.



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3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay VIWAPA a sum not to exceed **FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,500,000.00)** in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this MOA.

4. TRAVEL EXPENSES

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation) above, the Government agrees to pay documented transportation, subsistence, lodging and other travel expenses, while in travel status, for trips which have been authorized in writing, in advance, by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government, or as agreed to by an addendum to this MOA, however, said costs and expenses shall not exceed N/A (\$ N/A).

5. RECORDS

VIWAPA when applicable, will present documented precise records of time and/or money expended under this MOA.

6. PROFESSIONAL STANDARDS

VIWAPA agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this MOA shall become the property of the Government and shall be turned over to it at the termination of this MOA. The above described materials shall not be used by VIWAPA or by any other person or entity except upon the written permission of the Government.

8. LIABILITY OF OTHERS

Nothing in this MOA shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by VIWAPA as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons,



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firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of VIWAPA of whatsoever nature, including but not limited to unemployment insurance and social security taxes for VIWAPA, its servants, agents or independent contractors.

9. ASSIGNMENT

VIWAPA shall not subcontract or assign any part of the services under this MOA without the prior written consent of the Government.

10. INDEMNIFICATION

To the extent permitted by law, VIWAPA 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 connected to the services to be performed by VIWAPA under this MOA and arising from any cause, except the sole negligence of Government.

11. INDEPENDENT CONTRACTOR

VIWAPA shall perform this MOA as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

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

13. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this MOA shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this MOA, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This MOA constitutes the entire agreement of the parties relating to the subject matter addressed



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in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

15. RIGHT TO WITHHOLD

If work under this MOA is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to VIWAPA, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the VIWAPA in writing in the event that it elects to exercise its right to withhold.

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

16. CONDITION PRECEDENT

This MOA shall be subject to the availability and appropriation of funds and to the approval of the Governor of the U.S. Virgin Islands.

17. TERMINATION

Either party will have the right to terminate this MOA with or without cause on thirty (30) days written notice to the other party specifying the date of termination.

18. PARTIAL TERMINATION

The performance of work under this MOA may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing thirty (30) days written notice to VIWAPA. This partial termination shall be effected by delivering to the VIWAPA a Notice of Partial Termination specifying the extent to which the term and/or duties under this MOA are terminated and the date upon which such termination becomes effective. The VIWAPA shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) day notice.

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 on account of race, creed, color, sex, religion,



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disability or national origin.

20. CONFLICT OF INTEREST

VIWAPA 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 required to be performed under this MOA.

21. NOTICE

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

GOVERNMENT

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

KIMBERLEY CAUSEY-GOMEZ
Commissioner
Department of Human Services
1303 Hospital Ground, Suite 1
St. Thomas U.S. Virgin Islands 00802

VIRGIN ISLANDS WATER and POWER AUTHORITY

DIONNE G. SINCLAIR, ESQ.
Acting General Counsel
V. I. Water and Power Authority
P.O. Box 1450
St. Thomas, USVI 00804-1450

Email: dionne.sinclair@viwapa.vi



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MARLENE FRANCIS
Manager, Customer Service
V. I. Water and Power Authority
P.O. Box 1450
St. Thomas, USVI 00804-1450

Email: marlene.francis@viwapa.vi

22. LICENSURE

VIWAPA covenants that it has:

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

23. OTHER PROVISIONS

Addenda I and II attached hereto are a part of this MOA and are incorporated herein by reference.

24. DEBARMENT CERTIFICATION

By execution of this MOA, the VIWAPA certifies that it is eligible to receive awards using federally appropriated funds and that it has not been suspended or debarred from entering into agreements with any federal agency. VIWAPA shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT". In the event VIWAPA or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the VIWAPA or subcontractor agrees that it shall not be entitled to payment for any work performed under this MOA or any subcontract and that the VIWAPA or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

25. FALSE CLAIMS

VIWAPA warrants that it shall not, with respect to this MOA, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. VIWAPA



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acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

26. NOTICE OF FEDERAL FUNDING

VIWAPA acknowledges that this MOA is funded, in whole or in part, by federal funds. VIWAPA warrants that it shall not, with respect to this MOA, make or present any claim knowing such claim to be false, fictitious, or fraudulent. VIWAPA acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

28. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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



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

WITNESSES:


GOVERNMENT OF THE VIRGIN ISLANDS




Kimberley Causey-Gomez, Commissioner
Department of Human Services

07.02.2021
Date

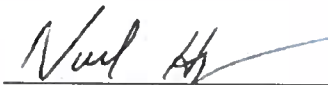



Anthony D. Thomas, Commissioner

7/26/2021
Date

VIRGIN ISLANDS WATER & POWER AUTHORITY




Noel Hodge, Interim Executive Director/CEO
Virgin Islands Water & Power Authority

06-30-2021
Date

APPROVED:



Honorable Albert Bryan Jr.
GOVERNOR OF THE U.S. VIRGIN ISLANDS

Date: 9-15-21

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:


Assistant Attorney General

Date 7/30/2021

PURCHASE ORDER NO. _____