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MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND THE
DEPARTMENT OF THE ARMY
FOR THE
EPA CONSTRUCTION GRANT WORK
OF THE
UNITED STATES VIRGIN ISLANDS (USVI)

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(EPA Identification Number: PW96941535-01-0)

This Memorandum of Understanding entered into this 13 day of August 1992, by and between the United States Environmental Protection Agency (hereinafter referred to as EPA), Region II, acting by and through its Regional Administrator, party of the first part, and the Department of the Army, U.S. Army Corps of Engineers (hereinafter referred to as the Corps), Jacksonville District, represented by the District Engineer, as the second party, witnesseth that:

WHEREAS, the EPA administers a construction grant program for waste water treatment projects; and

WHEREAS, the United States Virgin Islands is, and is expected to continue to be, the recipient of construction grant funds from the EPA under the construction grants program regarding improvements for its waste water treatment projects; and

WHEREAS, Section 406 of the Water Resources Development Act of 1990 provides that upon request of the Governor of the United States Virgin Islands with respect to a construction project in the Virgin Islands for which Federal financial assistance is available, the Federal official administering such assistance may make such assistance available to the Secretary of the Army instead of the Virgin Islands. The Secretary shall use such assistance to carry out the project in accordance with such law; and

WHEREAS, the Governor of the United States Virgin Islands has made the request for Corps assistance in its EPA construction grant fund program through a letter dated January 16, 1991; and

WHEREAS, the Corps is able to provide assistance to the United States Virgin Islands as described in a memorandum of agreement, and in this memorandum EPA is desirous of providing the construction grant funds in an expeditious manner to the Virgin Islands so that the Corps can properly exercise their above authority;

NOW, THEREFORE, the parties do hereby agree as follows:

GENERAL PROVISIONS

1. The Corps agrees to serve as the design and construction agent for the United States Virgin Islands for those waste water treatment projects funded by the U.S. Environmental Protection Agency Construction Grants Program and identified through joint Corps/Virgin Islands work assignments. The Corps has entered into a memorandum of agreement with the United States Virgin Islands establishing the agency relationship and setting forth the respective duties and obligations of each party. A copy of that intergovernmental agreement is attached hereto and marked as Exhibit "A".

2. The Corps agrees to assist the Virgin Islands Department of Public Works (VIDPW) in the preparation of construction grant proposals. The formal construction grant applications will then be finalized by the VIDPW and submitted to EPA.

3. EPA agrees to provide construction grant fund payments upon the request of the Corps under the terms of the approved construction grants. The Corps shall submit request for payment directly to EPA in accordance with the requirement of the grant. The VIDPW will receive copies of all construction grant funding requests.

STATUTORY AUTHORITY

This memorandum is entered into pursuant to the Economy Act of 1932 (31 U.S.C. 1535) and Section 406 of the Water Resources Development Act of 1990.

PROCEDURE FOR EPA APPROVAL

1. Once a Corps/V.I. work assignment has been authorized and the construction grant awarded to the VIDPW, the following procedure shall be utilized to obtain EPA approval during the subsequent construction effort:

a. EPA shall review and approve the contract design and construction documents.

b. EPA shall authorize the award of the design and construction contracts.

c. EPA shall review all change orders to determine their inclusion within the scope of the existing construction grant and the availability of current grant funding therefor; however, the Corps Contracting Officer shall have final authority to issue the change order. (If EPA funding is not available then funding will be from the United States Virgin Islands pursuant to the terms outlined in the intergovernmental agreement dated August 9, 1991).

d. EPA shall approve final inspections of projects.

e. EPA shall approve administrative completions.

f. EPA shall review contractor claims for the purpose of establishing grant eligibility, however the validity of such claim shall be determined by the Corps Contracting Officer.

g. EPA shall promptly pay all payment requests made by the Corps pursuant to the terms of the construction grant and this agreement so long as the Corps and the VIDPW are in compliance with the terms of the grant and applicable EPA regulations. A procedure will be established to ensure payments are forwarded to the contractor within 15 days of the contractor payment estimate.

GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED BY CORPS

The VIDPW is designated the authorizing entity upon which formal grant applications can be signed and submitted to EPA. The Corps shall assist the VIDPW in the preparation of construction grant proposals for work to be performed under each specific grant. The grant shall also set forth information regarding the cost of construction, Corps administrative costs, engineering basic fees for design, engineering basic fees for construction, project inspection fees, other engineering fees and construction costs as appropriate and resident engineer inspection fees.

THE WORK

1. The Corps work shall consist of various work assignments pertaining to the waste water treatment projects to be constructed. The WORK may include, but is not limited to the preparation of procurement documents, cost estimates, advertising, contract awards, design and design review, value engineering and safety standardization, contract administration, including modifications, contractor payments, quality assurance, checkout period services management, accounting and reporting systems as necessary.

2. Procurement of all property and services undertaken in connection with any EPA assisted project shall comply with applicable provisions of 40 CFR Parts 31 and 35. The Federal Acquisition Regulations (FAR) shall govern all architect-engineer (AE) and construction contract procurement and may be used in satisfaction of 40 CFR 31.36(a). The Corps shall be designated the authorized Contracting Officer.

COST ACCOUNT PROCEDURES

1. The Corps, Jacksonville District will be designated as the PAYEE.
2. The Corps will make prompt payments to the contractors. To expedite and ensure payments are made, the Corps will be allowed by the VIDPW to utilize the grant allowance as working capital.
3. Contractor payments will be reviewed, approved, and paid by the Corps. Reimbursement payment requests by the Corps will be submitted directly to EPA, Region II, for payment, with copies to the VIDPW. EPA will take no action on the reimbursement request for at least ten (10) Federal working days from the request date. During that time, the VIDPW can contact Mr. Bruce Kiselica, or his successor, with any comment or objection to the payment or portion thereof.
4. Payment requests for work performed by the Corps will be submitted to EPA, Region II, with a copy sent to the VIDPW. EPA will take no action for at least ten (10) Federal working days from the date of the payment. During that time, the VIDPW can contact Mr. Bruce Kiselica or his successor, with any comment or objection to the payment or portion thereof.
5. Contractor payments and payments for work performed by the Corps can be combined and submitted together. Normally, EPA receives requests for payments on a monthly basis. To ensure payments to contractors are not delayed, EPA will allow the Corps to submit two (2) separate payments requests, one for contractual services and the other for services rendered by the Corps.
6. All payment requests submitted to EPA must include detailed itemized information, including information previously paid in prior invoices.
7. The budget items approved in the grant cannot be exceeded unless a formal grant amendment, including all supporting documentation, has been submitted to EPA for approval and, subsequently, awarded.

COMMUNICATIONS BETWEEN THE PARTIES

1. Communications between the parties pertaining to this Memorandum of Understanding or to any amendments thereto, to the policies of the parties, to interpretations thereof shall be between the signatories hereto, their successors in office or their designated representatives.
2. Communications pertaining to the WORK or the FUNDING, under any construction grant shall be between the signatories hereto, their successors in office or their designated representatives.

3. Each party hereto shall keep the other party fully informed of its various business addresses, changes thereto, and relevant communications procedures.

PROJECT OFFICERS

The Corps District Engineer and the Regional Administrator have assigned the following individuals to represent their respective party as Project Officer for any/all successive Work Assignments, and amendments thereto, which are specifically identified through the Corps and USVI Memorandum of Agreement.

DEPARTMENT OF THE ARMY

Jacksonville District
Federal Building
400 West Bay Street
P.O. Box 4970
Jacksonville, Fla. 32201

ATTN: Richard E. Bonner, P.E.
Telephone: (904) 946-2586

ENVIRONMENTAL PROTECTION AGENCY

Water Management Division
26 Federal Plaza, Room 837
New York, New York 10278

ATTN: Bruce Kiselica
Telephone: (212) 264-0217

AMENDMENTS AND TERMINATION

1. If at any time during the implementation of this MOU, either party desires to modify provisions pursuant to the terms of the MOU, unless mutually agreed to by both parties, all terms specified will remain in effect.

2. This Memorandum of Understanding shall terminate: (1) when the construction grant projects have been fully completed, (2) by mutual written agreement, (3) by either party giving 60 days written notice to the other, or (4) by the expiration of the Corps statutory authority under Section 406 of the Water Resources Development Act of 1990. In the event that this MOU is terminated by the occurrence of 3 or 4 a termination agreement shall be prepared setting forth the agreements for completing the WORK in progress, if any, for funding the termination, and for handling all other matters then pending. The 60 days notice and completion arrangements may be waived during a declaration of war or national emergency.

EFFECTIVE DATE

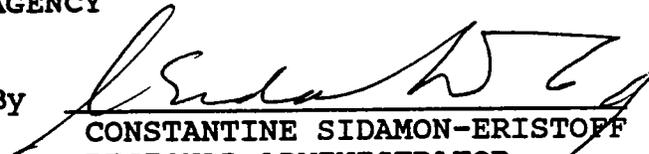
This MOU shall take effect upon approval by the Corps District Engineer or his authorized representative and the Regional Administrator, Region II or his authorized representative.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the day and year first above written.

DEPARTMENT OF THE ARMY

U.S. ENVIRONMENTAL PROTECTION
AGENCY

By 
TERRENCE C. SALT
COLONEL, CORPS OF ENGINEERS
DISTRICT ENGINEER,
JACKSONVILLE DISTRICT

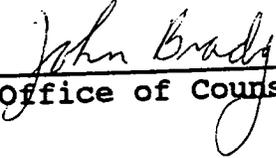
By 
CONSTANTINE SIDAMON-ERISTOFF
REGIONAL ADMINISTRATOR
REGION II

DATED: 16 JUL 92

DATED: August 13, 1992

CERTIFICATION OF LEGAL REVIEW

The draft Memorandum of Understanding between the United States Environmental Protection Agency and the Department of the Army for the EPA Construction Grant Work, United States Virgin Islands has been fully reviewed by the Office of Counsel, USAED, Jacksonville.



Office of Counsel