

SUPPLEMENTARY MEMORANDUM OF UNDERSTANDING

**between the International Atomic Energy Agency and
the United Nations Office at Vienna, the United Nations Industrial Development
Organization, and the Preparatory Commission for the Comprehensive Nuclear
Test-Ban Treaty Organization**

concerning

**administrative arrangements and common services for the Child Care Centre at the
Vienna International Centre**

Bearing in mind the Memorandum of Understanding of 31 March 1977 concerning the allocation of common services at the Vienna International Centre ("VIC") concluded between the International Atomic Energy Agency, the United Nations and the United Nations Industrial Development Organization as amended by the Supplementary Memorandum of Understanding of 30 November 1998 between the International Atomic Energy Agency, the United Nations, the United Nations Industrial Development Organization and the Preparatory Commission for the Comprehensive Nuclear Test-Ban Treaty Organization (hereinafter referred to respectively as "the IAEA", "the UN", "UNIDO", "CTBTO" and jointly as "the Parties"):

Bearing in mind the Memorandum of Understanding between the Parties concerning the construction and operation of the VIC Child Care Facility of 8 January 2001 (Appendix I) and taking into account that paragraph 6 of that Memorandum prescribes the conclusion of a supplementary Memorandum of Understanding;

Bearing in mind the Agreement between the International Atomic Energy Agency and the Municipality of Vienna for the provision of services in connection with the operation and staffing of the child day-care centre of 13 August 2002 (Appendix II);

Considering that the Child Care Centre is available as a common service for use by the staff of the Parties;

the Parties have agreed on the following arrangements:

1. a) The Child Care Centre will provide child care services to children of staff of the international organizations located at the VIC (VBOs) and of staff of the Missions accredited to the VBOs. The Child Care Centre places shall be shared between the Parties in accordance with the number of staff in each VBO as calculated at the end of December of the previous year. The places shall be filled in accordance with the eligibility and priority criteria agreed among the Joint Staff/Management Bodies of the Parties (Annex I). In the event of vacancies which cannot be filled by the VBOs, children of the staff of the Missions accredited to the VBOs may become eligible. Only in the event of vacancies which cannot be filled by children of the entities mentioned in the aforementioned eligibility criteria, may persons suggested by the Municipality be admitted to the Child Care Centre.

b) The IAEA will carry out administering functions for the Child Care Centre.

c) Buildings Management Service (BMS) is the contracting agent for the Parties regarding the procurement of supplies, furniture, equipment and services that are not covered by the Municipality in accordance with the Agreement of 13 August 2002. BMS will also provide utilities, arrange for maintenance and repair of the building, of the installations, furniture and equipment and will be responsible for cleaning and gardening and, if required, for the replacement of furniture and equipment.

d) The United Nations Security and Safety Section (UNSS) will provide security services.

2. According to the agreement with the Municipality of 13 August 2002, the costs for the day-to-day operation of the Child Care Centre, including inter alia the costs of the Municipality staff, food for the children and of expendable items, shall be borne solely by the Municipality. The Municipality will also collect from parents the fees for tuition.

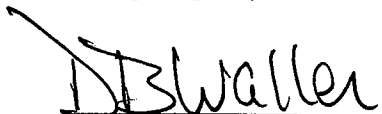
3. The Parties agree to share the cost of utilities, cleaning, gardening, general maintenance and repair of the premises and installations, as well as repair and replacement of furniture and equipment for the Child Care Centre, and of security services as covered in the BMS budget and the UNSS budget, for a period of at least 10 years from the date of the opening of the Child Care Centre. The cost sharing shall be made in accordance with the established BMS cost sharing formula which, at the time of signature of this Supplementary Memorandum of Understanding, is as follows: IAEA 52.79%, UNIDO 16.40%, UNOV 21.94% and CTBTO 8.87%. Should special needs arise relating to the operation of the Child Care Centre the Chairperson of the Advisory Committee on the Child Care Centre will consult with the Parties on ways and means to finance those needs.

4. The Parties shall not be held liable for deficiencies in the services provided, which are due to circumstances beyond their control, nor for any injuries, losses and damages caused in the Child Care Centre premises by the Municipality during or as a result of its operations of the Child Care Centre.

5. The existing Advisory Committee on the Child Care Centre shall continue to advise the IAEA on all matters regarding the operation of the Centre. The scope and organization of the work of the Committee shall be specified in the Terms of Reference and the Rules of Procedure of the Committee, which have been revised and agreed upon by the Joint Staff/Management Bodies of the Parties and are attached hereto as Annex II.

6. Any amendment to the provisions contained herein shall be made in writing and be signed by the duly authorized representatives of the Parties.

For the International Atomic
Energy Agency:



Signature

David B. Waller
Deputy Director General
Department of Management

Name and Title

2004-03-25
Date

For the United Nations:

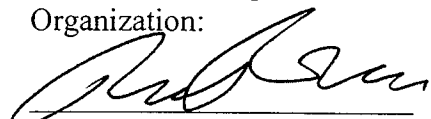

Signature

Franz Baumann
Director
Division for Management

Name and Title

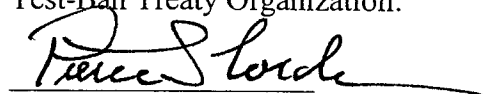
30 March 2004
Date

For the United Nations
Industrial Development
Organization:


Signature
Renato Fornocaldo
Managing Director
Division of Administration
Name and Title

29/03/2004
Date

For the Preparatory Commission
for the Comprehensive Nuclear
Test-Ban Treaty Organization:


Signature

Pierce S. Corden, Director, Division of Administration
Name and Title

8 April 2004
Date

childcarecenter

MEMORANDUM OF UNDERSTANDING

**between the International Atomic Energy Agency and
the United Nations Office at Vienna, the United Nations Industrial Development
Organization, and the Preparatory Commission for the Comprehensive Nuclear
Test-Ban Treaty Organization**

concerning

the construction and operation of the new VIC Child Care Facility

Bearing in mind the Memorandum of Understanding of 31 March 1977 concerning the allocation of common services at the Vienna International Centre ("VIC") concluded between the International Atomic Energy Agency, the United Nations and the United Nations Industrial Development Organization as amended by the Supplementary Memorandum of Understanding of 30 November 1998 between the International Atomic Energy Agency, the United Nations, the United Nations Industrial Development Organization and the Preparatory Commission for the Comprehensive Nuclear Text-Ban Treaty Organization (hereinafter referred to respectively as "the IAEA", "the UN", "UNIDO", "CTBTO" and jointly as "the Parties"):

Bearing in mind the Memorandum of Understanding between the United Nations, the International Atomic Energy Agency and United Nations Industrial Development Organization concerning Common Services at the Vienna International Centre relating to the Establishment and Operation of a Child Care Centre of 29 November 1989;

Bearing in mind the Agreement between UNIDO and the Municipality of Vienna for the provision of services in connection with the operation and staffing of the Child Care Centre at the VIC of 14 December 1989;

Considering that the Parties are desirous of expanding the existing Child Care Centre with a view to providing child care for children of the staff of the Parties and of staff of the Permanent Missions accredited to the International Organizations up to school age pursuant to the Joint Work/Family Agenda adopted in 1995 by the Administrative Committee on Coordination;

Considering that the Austrian Federal Government and the City of Vienna (hereinafter referred to as "Municipality") have granted funds in the amount of ATS 12.6 million as a subsidy for the creation of additional child care places through the construction of a new child care facility on VIC premises in accordance with the requirements and conditions set forth in the Förderungsvertrag (Assistance Agreement) concluded between the Municipality and the IAEA as the responsible party for the child care expansion project;

Considering that the Staff Councils of the IAEA, the UN, UNIDO and the Division of Administration of CTBTO have agreed to fund, each according to its share based on the VIC Buildings Management Service (BMS) cost sharing formula, the remaining construction costs, which are currently estimated to amount to ATS 8.2 million, i.e. ATS 6.4 million for the subsidized part (Area A of Annex I), and additional ATS 1.8 million for the unsubsidized part (Area B of Annex I);

Considering that the Austrian Federal Government, represented by the Internationales Amtssitz und Konferenzzentrum Wien A.G. (hereinafter referred to as IAKW), approved the construction plans for the expanded facility to be built on VIC premises;

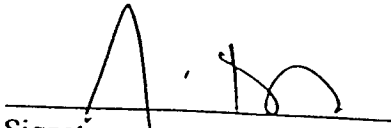
Considering that the Municipality has affirmed in its letter of 9 July 1999, addressed to the VIC Advisory Committee on the Child Care Centre, that it will continue to provide the necessary child care services for the expanded facility;

The Parties have agreed as follows:

1. A new child care facility for seven (7) age groups (max. 157 places) at an estimated cost of ATS 20.8 million shall be constructed on VIC premises in accordance with the construction plan annexed to this Memorandum of Understanding and with the financial support of the Municipality and the Staff Councils of the IAEA, the UN, UNIDO and the CTBTO Administrative Division, all of the latter having delivered the pledge contained in Annex II to this Memorandum of Understanding.
2. The responsibility for providing services in connection with the child care expansion project, including the responsibility for establishing the required contractual relations with the Municipality regarding the conclusion of the Assistance Agreement and its implementation, is assigned to the IAEA. During the construction period the IAEA shall also be the contracting agent for the Parties regarding procurement of supplies, equipment and services. The administrative support in terms of staff time will be provided as a cost free Common Service to the other Parties. Any out-of-pocket expenses incurred by the IAEA will be charged to the cost of the expansion project, and reimbursement will be sought from the project fund to be established for the purpose of meeting the project costs by the IAEA.
3. The responsibility for the technical realization of the facility as a cost free Common Service to all other Parties is assigned to BMS of UNIDO which shall oversee the erection of the building based on the approved construction plan in Annex I and in accordance with the Austrian regulations and rules applicable to child care facilities with public funding.
4. Should it become evident that there will be a shortage of funds for the construction of the new facility due to a cost-overrun, the Parties together with the Staff Councils will consult on ways and means to finance the shortfall in order not to jeopardize the expansion project.
5. The new facility created with the aforementioned financial assistance, shall be maintained for a period of at least ten (10) years from the date of the opening in accordance with the provisions of the Assistance Agreement.

6. The future costs of general buildings maintenance, repair and utilities, as well as security and safety services of the new facility shall be borne by the Parties for a time period of at least ten (10) years. Such sharing of costs shall be governed by a supplementary Memorandum of Understanding to be concluded between the Parties based upon the applicable Buildings Management Service (BMS) cost sharing formula. The supplementary Memorandum of Understanding shall also cover *inter alia* the following matters: eligibility and priority criteria for the filling of child care centre places, financial and administrative arrangements, limitation of liability.
7. As the Municipality is to carry out the day-to-day management and operation of the new child care facility and to provide child care services of the same standard and at the same cost as in its other child care facilities in Vienna, a new agreement to replace that of 14 December 1989, shall be concluded between the Municipality and the Party designated to assume the administering functions presently exercised by UNIDO. In this respect, the Parties shall decide prior to the completion of the expansion project which of them will assume the aforementioned administering functions.
8. The Parties agree to retain the role of the Advisory Committee on the Child Care Centre, which was established by the Memorandum of Understanding of 29 November 1989. The Parties shall revise the Terms of Reference of the Committee to reflect its activities with respect to the new facility.
9. The Annexes referred to in this Memorandum of Understanding shall form an integral part thereof.
10. The IAEA, the UN and UNIDO, which financed the erection of the existing Child Care centre building, shall decide jointly on the use or disposal of the building.
11. Any amendment to the provisions contained herein shall be made in writing and be signed by the duly authorized representative of the Parties.
12. This Memorandum of Understanding shall enter into force on the date of the last signature by the representatives of the Parties and shall be supplemented by the Memorandum of Understanding referred to in paragraph 6 above, prior to the completion of the expansion project. Without prejudice to the obligations specified in paragraph 6 above, the existing Memorandum of Understanding of 29 November 1989 relating to the Establishment and Operation of a Child Care Centre will cease to apply upon the entry into force of the supplementary Memorandum of Understanding.
13. Except insofar as they may be inconsistent with any of the provisions of the present Memorandum of Understanding, the arrangements contained in the Memorandum of Understanding of 31 March 1977 concerning the allocation of common services at the VIC as amended by the Supplementary Memorandum of Understanding of 30 November 1998 are applicable to the subject matter of the present Memorandum of Understanding.

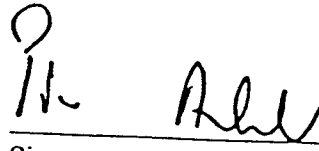
FOR THE INTERNATIONAL ATOMIC ENERGY AGENCY:


Signature

MOHAMED ELBARADEI
Name and Title DIRECTOR GENERAL

8 JAN. 2001
Date

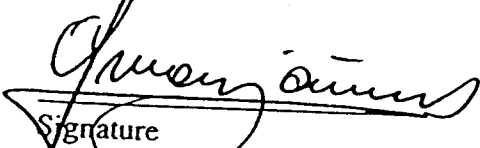
FOR THE UNITED NATIONS:


Signature

Rina Azzacchi, Director-General
Name and Title

23 November 2000
Date


FOR THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION:


Signature

Mr. Carlos Majariñas
Name and Title Director-General

20 DEC 2000
Date

FOR THE PREPARATORY COMMISSION FOR THE COMPREHENSIVE NUCLEAR TEST-BAN TREATY ORGANIZATION:


Signature

Executive Secretary
Name and Title

2/1/2001
Date

AGREEMENT

between the

INTERNATIONAL ATOMIC ENERGY AGENCY

and the

MUNICIPALITY OF VIENNA

on the provision of services

in connection with

the operation and staffing of the child day-care centre

at the

VIENNA INTERNATIONAL CENTRE

in

VIENNA, AUSTRIA

This Agreement is concluded between the International Atomic Energy Agency (hereinafter referred to as "the IAEA"), whose headquarters are at the Vienna International Centre (hereinafter referred to as "the VIC"), Wagramer Strasse 5, A-1400 Vienna, Austria, and the Municipality of Vienna ("Gemeinde Wien", hereinafter referred to as "the Municipality"). The IAEA is acting on its own behalf and on behalf of the VIC-based international organizations comprising the United Nations Office at Vienna (UNOV), the United Nations Industrial Development Organization (UNIDO) and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO).

Article 1 This Agreement regulates the arrangements for the provision of child-care services for the children admitted to the child day-care centre located at the VIC in accordance with the internal guidelines of the VIC-based international organizations. The Municipality will provide child-care services which shall include but not be limited to:

- a) Care, supervision and development support for children who are between 3 months of age and compulsory school age. These services shall be provided in the German language. The Municipality will seek to engage a child-care professional with an additional qualification in English for the child day-care centre.
- b) Performance of other tasks essential to the operation of the child-care facilities, including the management of the child day-care centre in the same manner as at other municipal child day-care centres. In addition to the care, supervision and development support mentioned above under a), the Municipality staff shall deal with administrative matters, such as allocating places, collecting fees, purchasing teaching aids and other consumables, including food, to the same extent as is the case at other municipal child day-care centres.

Article 2

- a) The child-care services shall be provided on all working days of the VIC-based international organizations in so far as they fall on weekdays, i.e. Monday to Friday, and are not Austrian public holidays.
- b) The operating hours shall be determined in consultation with the parents within the overall range offered in all municipal child day-care centres (maximum span 6 a.m.-6 p.m.).

Article 3 The fees for parents charged by the Municipality in accordance with Article 1b) shall be subject to the same conditions and provisions that apply to all other municipal child day-care centres.

Article 4

- a) In order to assist the Municipality to carry out the duties and responsibilities incumbent on it by virtue of this Agreement, the IAEA shall make the premises available as described in Appendix A, which is an integral part of this Agreement.
- b) These premises are furnished as listed in the inventory drawn up by the IAEA in Appendix B, which is an integral part of this Agreement. Amendments to Appendix B may be made by mutual agreement of the parties in writing.
- c) Title to the furnishings referred to in Appendix B shall rest with the IAEA. Replacement of the furnishings listed in Appendix B are the responsibility of the IAEA should these furnishings be defective beyond repair.

Article 5 The IAEA shall guarantee access to the premises at all appropriate times to the Municipality, its representatives, employees and suppliers.

Article 6 The IAEA shall, in addition to making the premises described in Appendix A available, be responsible for the following: electrical lighting and power, heating, hot and cold water, a local telephone service, garbage removal and gardening services - including the necessary facilities and equipment for these purposes - as well as the maintenance and repair of the premises and all furnishings listed in this contract. Daily basic cleaning services including window cleaning to VIC standards shall also be provided by the IAEA.

Article 7

- a) The Municipality shall be responsible for all the costs of the day-to-day operation of the child day-care centre, including, but not limited to, the costs of staff, furnishings as listed in the inventory in Appendix C, including their replacement should these furnishings be defective beyond repair, materials required for care, play and activities, hygiene products and other consumer goods as well as office materials. Appendix C shall form an integral part of this Agreement. Amendments to Appendix C may be made by mutual agreement of the parties in writing.
- b) Title to the furnishings referred to in Appendix C shall rest with the Municipality.

Article 8

- a) The Municipality shall employ and supervise all the staff required for the discharge of its obligations and responsibilities under this Agreement.
- b) The terms and conditions of employment shall be directly negotiated between the Municipality and the staff concerned. The Municipality shall employ only staff whose comportment is of the highest standard.
- c) All staff employed by the Municipality in connection with this Agreement shall be considered employees of the Municipality.

Article 9 The Municipality shall inform the IAEA promptly in writing of the first name, surname, nationality and date of birth of every employee and of any changes regarding the number and composition of the staff. The assignment of the staff, especially the recruitment and retention of employees, is the responsibility of the Municipality, but the IAEA may request a change in the staffing upon legitimate justification submitted in writing. Municipality staff selected to work at the child day-care centre must undergo security checks by the United Nations Security and Safety Section (UNSSS)¹ responsible for the VIC-based international organizations for the purpose of issuing a grounds pass. Staff will be requested by the IAEA to return grounds passes on the day of termination of employment at the VIC

¹ UNSSS - United Nations Security and Safety Section

child day-care centre.

Article 10

- a) The IAEA shall, in co-operation with the UNIDO Buildings Management Service (BMS)² and the UNSSS, provide and maintain such fire protection services as it deems necessary, and shall take appropriate steps for fire protection and for the prevention of water damage and broken glass on the premises.
- b) The IAEA, or the UNSSS and BMS as appropriate, may establish instructions on fire protection, including instructions on restricting the use of the premises. The Municipality, its representatives or its employees shall take no action and make no alterations to the premises which could increase the fire risk, and shall observe all the safety regulations and instructions issued by the BMS and the UNSSS. Any alterations to the premises or furnishings, or changes to the use thereof, shall only be made with appropriate prior permission from the BMS.

Article 11 The Municipality shall not transfer the rights, requirements and obligations arising from this Agreement to a third party.

Article 12 The Municipality shall not without the IAEA's written permission advertise the fact that it provides or has provided services to the VIC-based international organizations, nor shall it use the names, acronyms, emblems or official seals of the VIC-based international organizations for advertising purposes.

Article 13 The cost of repairs of damages to the premises and furnishings referred to in Article 4 caused by or attributable to, deliberate or to gross negligent acts of the Municipality, its representatives, employees and suppliers, shall be borne by the Municipality.

Article 14 The Municipality shall be liable in accordance with Austrian civil law for claims which are made as a result of injury, loss or damage:

- a) suffered by Municipality staff in the course of their work at the child day-care centre and which the Municipality has to settle in its capacity as employer, or for which the Municipality could be liable on the basis of the employment relationship;
- b) suffered by a third person with access to the premises, and which can be attributed to acts or omissions of the Municipality staff.

The Municipality shall hold and keep the VIC-based international organizations harmless from any such claim.

² BMS - Buildings Management Service

Article 15 In the event that "force majeure" should prevent the Municipality from fulfilling all or a part of the duties and responsibilities incumbent on it by virtue of this Agreement, the Municipality shall immediately inform the IAEA in writing of all the details of this occurrence. In the event of force majeure the following provisions shall apply:

- a) The duties and responsibilities incumbent on the Municipality by virtue of this Agreement shall be suspended in so far as and as long as the Municipality is unable to perform its obligations.
- b) Should the Municipality, owing to "force majeure", be incapable in the long term of carrying out or fulfilling, in full or in part, the duties or obligations incumbent on it by virtue of this Agreement, the IAEA can make use of its right to terminate this Agreement on the same terms and conditions as provided in Article 21 below, except that the period of notice shall be thirty (30) instead of ninety (90) days.
- c) With reference to the previous paragraph b), the IAEA can consider the Municipality permanently incapable of providing its services whenever this inability exceeds a period of ninety (90) days. Any period of ninety (90) days or less shall be regarded as a temporary inability to provide services.
- d) The expression "force majeure" used here covers natural events beyond the control of the affected party.

Article 16 None of the provisions in this Agreement may be interpreted as a waiver of the privileges and immunities which the VIC-based international organizations enjoy by virtue of the Headquarters or Seat Agreement concluded with the Republic of Austria.

Article 17 Any dispute arising out of or in connection with the interpretation or application of the terms of this Agreement, and which cannot be settled by the IAEA in any other way, may be referred by either party to the Agreement to an arbitral tribunal, which shall decide on the basis of the UNCITRAL Arbitration Rules valid on the day of referral of the dispute. The place of arbitration shall be Vienna, Austria. The language of the arbitration shall be English. The decision of the arbitrator may not be further contested and shall be binding on both parties. The unsuccessful party to the dispute must bear the costs of the proceedings.

Article 18 Amendments or additions to or abrogation of the conditions laid down in this Agreement shall be valid only if they are submitted in writing and approved by the duly authorized representatives of the parties.

Article 19 There are no verbal agreements collateral to this Agreement. Any notice given by either of the parties hereunder shall be sent in writing. All documents and all notices relating to this Agreement shall be sent in the German and English languages to the following addresses:

- a) from the Municipality to Director
Division of General Services
International Atomic Energy Agency
P.O. Box 100
A-1400 Vienna
- b) from the IAEA to The City of Vienna, represented by
The Municipality of Vienna
Department 11 A
Rüdengasse 11
A-1030 Wien

Article 20 This Agreement shall enter into force on the date of the last signature by the parties. Unless the provisions of Article 15 b) and Article 21 are applied, this Agreement shall remain in force for a period of five (5) years after the date of its entry into force. Both parties shall hold consultations not later than six months before the expiry of this Agreement to decide whether to extend this Agreement for a further period.

Article 21 Either party may terminate this Agreement at any time upon ninety (90) days' written notice of termination to the other party.

Done at Vienna, in duplicate, in the English and German languages, both texts being equally authentic.

Vienna, 13 Aug '02

for the
International Atomic Energy Agency



David B. Waller
Deputy Director General

for the
Magistrat der Stadt Wien
Municipality of Vienna, Department 11A
Magistratsabteilung 11A
Tagesbetreuung von Kindern,
Kindertagesheim der Stadt Wien
Rüdengasse 11
1030 Wien
Dr. Hans Voigt
Department Head (Obersenatsrat)

31/7/02