

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this day of January 13²⁰ 2019, 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 Office of Management and Budget (hereinafter referred to as „Government”) and OpenGov, Inc. (hereinafter referred to as “Contractor”).

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to implement a comprehensive, integrated software suite that aids in the development and publication of the Annual Executive Budget and provide performance measuring tools for the reporting of building of other budget related activities which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the Contractor was selected in accordance with 31 V.L.C. § 239(a)(8); the Contractor has the unique ability to interface with the Government's ERP system; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services; and

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

The Contractor will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this contract ("Professional Services"). Additionally, the Contractor will provide software as described in Addendum II ("Compensation Form"), subject to the terms of Contractor's standard Software Services Agreement ("SSA") attached hereto as Addendum III ("Software").

2. TERM AND EFFECTIVE DATE

This Contract shall be effective upon the date of execution of this Contract by the Governor of the U.S. Virgin Islands and shall terminate five (5) years thereafter. Within 24 hours of Contractor's receipt of the executed Contract from the Government, Contractor shall provide the Government access to the Software Services provided for under this Contract, for the duration of the term of this Contract.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the Professional Services, Software Services and travel under Section 4, agrees to pay Contractor a sum not to exceed Two Million, Seventy-Seven Thousand, Six Hundred Thirteen Dollars and Ninety Cents (\$2,073,613.90) in accordance with the provisions of Addendum II (Compensation) attached hereto and made a part hereof.

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,

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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 Contract, however, said costs and expenses shall not exceed Seven Thousand Dollars and Zero Cents (\$ 7,000.00).

5. RECORDS

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

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

7. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors; or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance, gross receipt, excise, and social security taxes for Contractor, its servants, agents or independent contractors.

8. ASSIGNMENT

Except in the event of a change of control, the Contractor shall not subcontract or assign any part of the Professional Services under this Contract without the prior written consent of the Government.

9. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to Contractor's intentional misconduct or gross negligence in the professional services to be performed by Contractor under this Contract, but excluding any causes of action arising from the sole negligence of Government.

10. INDEPENDENT CONTRACTOR

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

11. GOVERNING LAW

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

12. WAIVERS AND AMENDMENTS

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No waiver, modification or amendment of any term, condition, or provision of this Contract 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 Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

13. ENTIRE AGREEMENT

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

14. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, 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 Contractor 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 Contractor 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.

15. CONDITION PRECEDENT

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

16. TERMINATION

Either party will have the right to terminate this Contract with cause on fourteen days (14) days written notice to the other party specifying the date of termination.

17. PARTIAL TERMINATION

Government may terminate this Contract, upon providing at least ninety (90) days notice prior to the annual anniversary date from the start date of the Software Services subscription ("Subscription Anniversary Date") upon the occurrence of an Event of Nonappropriation as defined below. An "Event of Nonappropriation" occurs when prior to each Subscription Anniversary Date: a) Government uses all efforts that are lawful and within Government's official power, to secure the appropriate funds for the next year's Fees, including indicating the Software Services serve an essential purpose to Government; and b) Government has not acquired, used or issued a proposal for similar products or services during this period or has not hired any third party.

18. 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 Contract on account of race, creed, color, sex, religion, disability or national origin.

19. CONFLICT OF INTEREST

- (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 required to be performed under this Contract.
- (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 itself with the provisions of Title 3, Chapter 37 of the 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.

20. NOTICE

Any notice required to be given by the Terms of this Contract 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 Virgin Islands 00802

Jenifer O'Neal
Director
Office of Management and Budget
5041 Norre Gade 2nd Floor
St. Thomas, VI 00802

CONTRACTOR
OpenGov, Inc.
955 Charter Street
Redwood City, CA 94063
Attn: Legal
legal@opengov.com

21. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, 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 professions and occupations.

22. OTHER PROVISIONS

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

23. DEBARMENT CERTIFICATION

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor 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 the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

24. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, 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. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

25. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract

- (a) **COMMERCIAL GENERAL LIABILITY:** Commercial general liability insurance, in a form acceptable to the Government, on a "per occurrence" basis with a minimum limit of not less than one million dollars (\$1,000,000.00) for any one person per occurrence for death or personal injury and one million dollars (\$1,000,000.00) for any one occurrence for property damage. Insurance policy(ies) shall name the Government of the Virgin Islands as the certificate holder and additional insured via an endorsement.

(b) PROFESSIONAL LIABILITY: Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars (\$1,000,000.00) per claim. The Government shall be listed thereon as a certificate holder.

(c) WORKERS' COMPENSATION: Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

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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

Melanie H. Baker
Isidoro Walker

Jenifer O'Neal
Jenifer O'Neal, Director
Office of Management and Budget

12/31/19
Date

Margelene A. Francis
Anthony D. Thomas
Anthony D. Thomas, Commissioner
Department of Property and Procurement

12/23/2019
Date

CONTRACTOR

Paul H. Denton
Paul H. Denton

Paul H. Denton
Paul H. Denton, CFO
OpenGov, Inc.

11/13/19
Date

APPROVED:

Albert Bryan Jr.

Date: *1/13/20*

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

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:

Carol A. McDonald, Esq.
A.A.G.

Date *12/30/19*

PURCHASE ORDER NO.

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract No. _____ entered into between the Department of Property and Procurement and OpenGov, Inc.

Anthony D. Thomas, Commissioner
Department of Property and Procurement