

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 15th day of October, 2014, 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 PLANNING AND NATURAL RESOURCES (hereinafter referred to as "Government") and Benham, Hodge & Upson, P.C. (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government receives federal grants from the Environmental Protection Agency (hereinafter referred to as "EPA"), requiring compliance with federal rules and regulations of 40 CFR 31.20. In January, 2012, EPA performed an on-site evaluation of the general financial and administrative systems of the Government, to verify that corrective actions, internal controls and management procedures of federal programs were in place.

WHEREAS, during the on-site review, EPA recognized improvements by the Government, and areas that continued to cause concern for EPA. EPA regulations at 40 CFR 31.12 provide that a grantee may be considered "high risk" under certain circumstances, which include when the awarding agency determines that the grantee does not have a management system that meets federal standards. On November 19, 2013, the Government received written notification from EPA, that improvements to the management system must occur within six months or the Government would be declared a "high risk" grantee.

WHEREAS, the areas of concern to EPA were: i) the central Government accounting system does not reflect the account charges to the EPA assistance agreements in compliance with OMB Circular A-87, ii) and lack of an acceptable method for equitably allocating Government employee non-working hours across federal grants, iii) lack of acceptable methodologies for allocating the department's shared services through a negotiated indirect cost plan, and iv) lack of supporting documentation for certain travel costs.

WHEREAS, the Government is in need of the services of a certified public accountant to assist the Government in preparing audit ready documentation in responding to the concerns of the EPA for the last three pay cycles for fiscal year ending September 30, 2011, and all the pay cycles for fiscal years ending September 30, 2012, 2013 and 2014, which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the Contractor 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

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

2. TERM

This Contract shall commence on October 1, 2014 and shall terminate on September 30, 2015.

3. COMPENSATION

The Government in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor an amount not to exceed ONE HUNDRED TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$127,500.00) in accordance with the provisions set forth in Addendum II (Terms of Compensation) attached hereto and made a part of this Contract.

4. TRAVEL EXPENSES

Inclusive in 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 Contract, however, said costs and expenses shall not exceed N/A (\$N/A).

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 provide accounting assistance in accordance with generally accepted governmental accounting standards issued by the Governmental Accounting Standards Board, generally accepted accounting standards issued by the Financial Accounting Standards Board, *Governmental Auditing Standards* issued by the U.S. General Accounting Office; and the provisions of the Office of Management and Budget Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*.

7. DOCUMENTS, PRINTOUTS, ETC.

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

8. 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 and social security taxes for Contractor, its servants, agents or independent Contractors.

9. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government.

10. DOCUMENT RETENTION STANDARDS

The Contractor agrees to be subject to document retention standards applicable to certified public accounting firms mandated by the American Institute of Certified Public Accountants, the Government Accounting Standards Board, and the United States Government Accounting Office.

11. INDEMNIFICATION

Contractor agrees to investigate, defend and hold harmless the 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 in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

12. 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.

13. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands without regard to conflict of laws principles. Any and all suits for the enforcement of this agreement or arising from any breach of this agreement shall be filed and maintained in a court of competent jurisdiction in the United States Virgin Islands.

14. WAIVERS AND AMENDMENTS

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.

15. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties hereto, and all prior understanding or communications, written or oral, with respect to the Project, which is the subject matter of this Contract, are merged herein.

16. 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 the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The 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 the Government if and while Contractor gives satisfactory assurance to the Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

17. CONDITION PRECEDENT

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

18. TERMINATION

(a) This Contract may be terminated only as follows:

- (1) by mutual written agreement of the Government and the Contractor, or
- (2) by the Government when the Contractor has failed to substantially perform a material provision of this Contract. The Government shall give the Contractor written notice of its intention to terminate this Contract pursuant to this Section, and the notice shall specify the duties and responsibilities which the Contractor has failed to perform. Thereupon, the Contractor shall have a term of **THIRTY (30) Days** following the receipt of said notice to cure such failure or failures or, in the alternative, to provide a Corrective Action Plan to reach such objective. If the Contractor cures such failure or failures to the reasonable satisfaction of the Government, the notice of intent to terminate shall be deemed terminated upon the lapse of the 30 day period, unless the parties shall otherwise agree in writing. In the event of termination, the Contractor shall be entitled to compensation for the fiscal year in which termination occurs, of fees and expenses incurred up to and including the date of termination, but in no event more than the amount authorized under Addendum II of this Contract.

(3) By the Contractor when the Government has failed to substantially perform a material provision of the Contract, including its duties and responsibilities as specified in Addendum 1, Section C, or when the Contractor believes it is in the best interest to withdraw from the Contract. The Contractor shall give the Government written notice of its intention to terminate this Contract pursuant to this Section, which notice shall specify any duties and responsibilities which the Government has failed to perform or the reasons that led the Contractor to the conclusion to withdraw. Thereupon, Government shall have a term of **THIRTY (30) Days** following receipt of said notice to cure such failure or failures or, in the alternative, to provide a Corrective Action Plan to reach such objective. If the Government cures such failure or failures to the reasonable satisfaction of the Contractor, the notice of intent to terminate shall be deemed withdrawn. Otherwise, the Contract shall be deemed terminated upon the lapse of the 30-day period or at the projected completion date presented in the Corrective Action Plan, unless the parties agree shall otherwise agree in writing. In the event of termination under this paragraph (3), the Contractor shall be entitled to compensation for fees and expenses incurred up to and including the date of termination, but in no event more than the amount authorized under Addendum II of this Contract for the fiscal year in which the termination occurs.

(b) Procedures For Termination Of The Contract

(1) Notice of Termination shall be given as provided in Section 22 of this Contract, and shall specify with particularity the nature and date of the termination.

(i) Upon receipt by the Contractor of a Notice of Termination the Contractor shall:

- (ii) Stop work under this Contract on the date and to the extent specified in the Notice of Termination.
- (iii) Complete the performance of such part of the work that has been specified for completion by the Notice of Termination. However, the Contractor shall not be obligated without its express consent to complete the performance of any part of the work contemplated under this Contract, or to continue performing on such parts of the work as the Government may specify following the effective date of termination.

- (2) Upon termination of this Contract in full, the Government may require the Contractor to return to the Government any property made available for its use during the term of this Contract.

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

20. 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;
- (iii) no financial interest in the Contract as that term is defined in section 1101 (1) of said Code chapter.

21. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor.

22. 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

Lynn A. Millin Maduro
Commissioner
Department of Property and Procurement
Subbase, Building #1, Third Floor
St. Thomas, Virgin Islands 00802

Jean-Pierre L. Oriol
Acting Commissioner
Department of Planning & Natural Resources
8100 Lindberg Bay, Suite 61
CEK Airport Terminal Building, 2nd Floor
St. Thomas, Virgin Islands 00802

CONTRACTOR

Benham, Hodge & Upson, P.C.
Janice V. Hodge, CPA, Principal
1352 Taarneberg Gade
40-CB Beltjen Road
St. Thomas, Virgin Islands 00802

23. 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.

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 claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

25. NOTICE OF FEDERAL FUNDING

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

26. 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.

27. OTHER PROVISIONS

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

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

WITNESSES:

Sherri Allard

Lisa Hill

GOVERNMENT OF THE VIRGIN ISLANDS

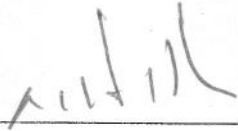
Jean-Pierre L. Oriol
Acting Commissioner
Department of Planning & Natural Resources

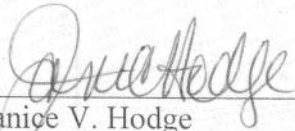
11/25/14
Date

Lynn A. Millin Maduro
Commissioner
Department of Property and Procurement

12/31/14
Date

CONTRACTOR

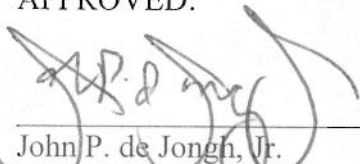




11/20/14
Date

Janice V. Hodge
Benham, Hodge & Upson, P.C.
(Corporate seal, if Contractor is a corporation)

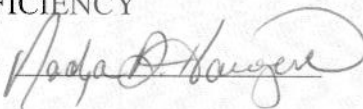
APPROVED:


John P. de Jongh, Jr.
GOVERNOR OF THE VIRGIN ISLANDS

Date: 12/31/14

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:



Date: 12/24/14

PURCHASE ORDER

ACCOUNT CODE 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
Benham, Hodge & Upson, P.C.

Lynn A. Millin Maduro, Commissioner
Department of Property and Procurement