

R2019 0974

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

JUL 02 2019

THIS SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT ("Agreement") is hereby entered into between PALM BEACH COUNTY, a Political Subdivision of the State of Florida, by and through its BOARD OF COUNTY COMMISSIONERS ("Contractor"), and the Government of the U.S. Virgin Islands, by and through its Department of Property and Procurement, on behalf of its Department of Licensing & Consumer Affairs ("Government") on the following terms and conditions:

WITNESSETH:

WHEREAS the Government is in need of the continued services of the Contractor to upgrade and enhance its website and web-based business license application, which duties and responsibilities are more particularly described in Addendum I (Statement of Work) attached hereto (the "Services"); and

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

WHEREAS, the Government and Contractor are governmental entities; and

WHEREAS, the Government's authority to enter into this Agreement is codified at Chapter 23 of Title 31, Virgin Islands Code; and

WHEREAS, the Contractor's authority to enter into this Agreement is codified at Section 125.01 of the Florida Statutes; and

WHEREAS, the Contractor may enter into agreements that serve a local public purpose; and

WHEREAS, the Contractor's provision of the services herein serve a local public purpose in that it will raise revenues for the Contractor, directly benefiting the citizens of Contractor through services rendered with said revenues; and

WHEREAS, the Government, by executing this Agreement, hereby certifies and attests that all applicable laws and regulations necessary to make this Agreement valid and fully enforceable have been complied with, including but not limited to, the requirements of Chapter 23 of Title 31, Virgin Islands Code §§ 233, 234, 235, 236, 239, 245, 248, 249 and the rules and regulations promulgated for its enforcement; and

WHEREAS, the Government further certifies that, in accordance with applicable law, it has made a sufficient unencumbered apportionment of its appropriation balance, in excess of all unpaid obligations, to defray the full costs of this Agreement; 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:

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1. Recitals: The foregoing recitals are true and correct and incorporated herein by reference.
2. Licensed Product. The parties are entering into this Agreement to establish an arrangement whereby Contractor is licensing certain application software programs ("Licensed Product") and providing professional services, as more fully described in Addendum I to this Agreement, (the "Statement of Work") on the terms and conditions set forth herein.
3. Scope of Use.
 - a. Delivery & Installation. The Contractor shall be responsible for providing access to the Licensed Product.
 - b. Operating License. The Government is granted a nonexclusive license to use the Licensed Product for the Government's internal use only.
 - c. Transfer of License. Neither this Agreement, nor any rights or obligations hereunder, may be transferred, assigned, delegated, sublicensed, relocated or moved without Contractor's prior written consent.
4. Term. Upon execution of this Agreement by the Governor of the U.S. Virgin Islands, the Agreement shall be effective for a Term beginning from October 1, 2018 and shall terminate on September 30, 2020. The Contract can be extended for two additional one-year terms by executing an Exercise of Renewal Option Form. Notice of option to renew must be provided at least ninety (90) days prior to the termination date of the Agreement.
5. Compensation. The Government, in consideration of the satisfactory performance of the services described in Addendum I (Statement of Work), agrees to pay Contractor compensation not to exceed THREE HUNDRED TWENTY-EIGHT THOUSAND DOLLARS (\$328,000.00) in accordance with the provisions set forth in Addendum II (the "Pricing Document for Professional Services") of this Agreement as follows:
 - a. Professional Services fee, which shall cover maintenance and support services, not to exceed \$216,400, which shall be invoiced on a monthly basis.
 - b. Monthly Software Lease Fee of \$1,650 per month with the monthly installment due and payable by the first day of the month. Contractor retains the option to review the Software Lease Fee on an annual basis and reserves the right to adjust said fee based upon actual costs; provided, however, that no adjustment shall be greater than 10% of the fee for the previous year.
 - c. Monthly Application Hosting Service Fee not to exceed \$3,000 with monthly installment due and payable by the first day of the month.

Contractor shall invoice the Government monthly in arrears for Software Lease and Application Hosting Services. The Government shall use its best efforts to pay the subject invoices within THIRTY (30) days of receipt of the invoices. Failure of the Government, despite its best efforts, to pay an invoice within THIRTY (30) days of receipt of the

invoice shall not be interpreted as an indication that the Government no longer desires Contractor's services.

Contractor shall separately invoice the Government on a monthly basis for Professional Services. The invoices shall specify the hours worked and the services provided. The invoices shall be subject to review and approval by the Government. The Government shall use its best efforts to, within THIRTY (30) days of receipt an invoice, pay the subject invoice in full or give a written explanation for non-payment of any contested portions of the invoice. Failure of the Government, despite its best efforts, to respond to a Professional Services invoice within THIRTY (30) days of receipt of the invoice shall not be interpreted as an indication that the Government no longer desires Contractor's professional services.

6. Acceptance and Training. The Licensed Product shall be deemed accepted by the Government upon installation and demonstration of its fitness for the particular purpose it was purchased by the Government. The Contractor shall, at no additional cost, provide training to Government personnel who will be utilizing the Licensed Product.
7. Travel. In addition to the compensation for services as specified in Paragraph 5 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 and the total of said costs and expenses shall not exceed \$10,000.
8. Program Code & Documentation.
 - a. Program Code. No source code or technical-level documentation are licensed under this Agreement.
 - b. Program Documentation. Contractor shall provide an electronic copy of "Documentation" describing in reasonable detail understandable by a user of general proficiency the use and operation of the Licensed Product at no cost to the Government. Documentation may be reproduced by the Government for the exclusive use of the Government.
9. Confidential & Proprietary Information.
 - a. Acknowledgment. The Government hereby acknowledges that the Licensed Product (including any Documentation, source code, translations, compilations, partial copies and derivative works) contains confidential and proprietary information belonging exclusively to the Contractor or such third party as may be identified on the Licensed Project or applicable Documentation ("Confidential & Proprietary Information"). Confidential & Proprietary Information does not include: (i) information already known or independently developed by the Government outside the scope of this relationship by personnel not having access to any Confidential & Proprietary Information, (ii) information in the public

domain, or (iii) information received by the Government from a third party who was free to disclose it.

- b. Covenant. With respect to the Confidential & Proprietary Information, and except as expressly authorized herein, the Government agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize or disclose such Confidentiality & Proprietary Information to any person or entity, except its own employees having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as the Contractor may approve in writing. Neither the Government nor any recipient shall: (i) alter or remove from any Licensed Product or associated Documentation any proprietary, copyright, trademark or trade secret legend, or (ii) decompile, disassemble or reverse engineer the Licensed Product or other Confidentiality & Proprietary Information (and any information derived in violation of such covenant shall automatically be deemed Confidential & Proprietary Information owned exclusively by the Contractor). The Government and its personnel shall use the same degree of care in safeguarding the Confidential & Proprietary Information as that used in safeguarding its own confidential information. Upon termination, the Government shall return or destroy all Confidential & Proprietary Information in its possession or control and cease all further use thereof.
- c. Injunctive Relief. The Government acknowledges that violation of this Section would cause irreparable harm to Contractor not adequately compensable by monetary damages. In addition to other relief, the Government agrees that, to the extent permitted by law, injunctive relief shall be available to prevent any actual or threatened violation of such provisions.

10. Warranties.

- a. Noninfringement Warranty. As of the effective date of this Agreement, Contractor, to the extent of its knowledge, represents and warrants that the Licensed Product, when properly used as contemplated herein, is not infringing or misappropriating any United States copyright, trademark, patent, or the trade secrets of any third persons. To the extent a court of competent jurisdiction holds otherwise, the Government may terminate all or any part of this Agreement immediately upon notice to Contractor.
- b. Limited Performance Warranty. Contractor represents and warrants for a period of 60 days from acceptance ("Warranty Period") that (i) the Licensed Product operates in accordance with the applicable Documentation provided; (ii) the Licensed Product is installed, implemented and operated in accordance with all instructions supplied by Contractor; (iii) all updates relating to any third party software products (including operating system software) that materially affect the performance of the Licensed Product have been properly installed or made available to Government; (iii) all associated equipment, software and environmental conditions have been properly maintained in accordance with applicable specifications and industry standards; and (iv) Contractor has not

introduced other equipment or software creating an adverse impact on the Licensed Product.

- c. Warranty Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION ("WARRANTIES") THE CONTRACTOR HEREBY DISCLAIMS WITH RESPECT TO ALL LICENSED PRODUCTS, SUPPORT SERVICES OR OTHER DELIVERABLES PROVIDED HEREUNDER, ALL EXPRESS AND IMPLIED WARRANTIES.
11. Indemnification. [Omitted]
12. Limitation on Liability. By entering into this Agreement, it is expressly understood that neither the Government, Contractor, nor any of their agencies, waive sovereign immunity or any other immunity defenses that may be extended to them by operation of statute, rule, operation of law, or otherwise, including, but not limited to, any limitations on the amount of damages that may be awarded or paid.
13. Liability of Others. Nothing in this Agreement shall be construed to impose any liability upon the Government to any persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, 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.
14. No Third-Party Beneficiary. No provision of this Contract is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or recipient, or official, employee, or volunteer of either party.
15. Independent Contractor. The Contractor shall perform this Agreement as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status. Nothing herein contained is intended nor shall create an agency relationship between the parties.
16. Audits and Public Records. Government acknowledges that its records relating to this Agreement are public records for the purposes of Chapter 119, F.S., and that it will comply and maintain such records in accordance with Florida's public records laws. Government shall maintain records, documents and other evidence to sufficiently establish its performance under this Agreement. Such records shall be maintained for at least three (3) years after the termination of this Agreement. If any inquiry, investigation, audit or litigation is underway at any time during the three (3) year period, Government shall continue to maintain and preserve the records until the resolution of the inquiry, investigation, audit or litigation. Contractor has the right, upon reasonable request and during normal business hours, to inspect, examine or copy said records.

17. Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, and to audit, investigate, monitor, and inspect the activities of the Government, its officers, agents, employees, and lobbyists in order to ensure compliance with contract/agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

18. Regulations, Licensing Requirements. The parties shall comply with all laws, ordinances and regulations applicable to the Services contemplated herein, to include those applicable to conflict of interest and collusion. The parties are presumed to be familiar with all applicable laws, including federal, state and local laws, ordinances, codes and regulations that may in any way be related to this Agreement.

19. Condition Precedent. This Agreement shall be Subject to the availability and appropriation of funds and to the approval of the Governor.

20. Termination. Either party will have the right to terminate this contract, without penalty, with or without cause on SIXTY (60) days written notice to the other party specifying the date of termination.

21. Non-Discrimination. Both parties warrant and represent that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information. The parties further warrant and agree that no person shall be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out in the performance of this Agreement.

22. Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Florida. Unless otherwise agreed to in writing by the parties, any and all legal action necessary to enforce the Agreement shall be held in a court of competent jurisdiction located in Palm Beach County, Florida.

23. Enabling Laws. Nothing in this Agreement is intended to cause either party hereto, to waive the legal immunities and defenses provided under their state and federal laws.

24. Dispute Resolution.

Mediation. The Government and Contractor agree that in the event of any controversy, claim or dispute arising out of or relating to this Agreement the parties shall first seek resolution of such controversy, claim or dispute through mediation. The mediation shall be conducted in Palm Beach County, Florida by a

mediator mutually acceptable to the parties, who shall conduct the mediation pursuant to the rules of the American Mediation Association. The mediator's fee shall be shared equally by both parties. Other than the mediator's fee, the parties shall bear in full their respective costs all other costs relating to the mediation.

25. Waivers and Amendments. No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representative, 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 Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

The Government reserves the right to make changes to the Statement of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Contractor of the Government's notification of a contemplated change, the Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the Government of any estimated change in the completion date, and (3) advise the Government if the contemplated change shall affect the Contractor's ability to meet the completion dates or schedules of this Agreement.

If the Government so instructs in writing, the Contractor shall suspend work on that portion of the Statement of Work affected by a contemplated change, pending the Government's decision to proceed with the change.

No change to the Statement of Work shall be valid or of any force unless made in writing, signed by the parties thereto, and the writing satisfies the requirements of Virgin Islands public contract procedures.

26. Assignment. The Contractor shall not assign or subcontract any part of the services under this Agreement without the prior written consent of the Government.
27. Effective Date. The Agreement will become effective upon execution of the Governor of the United States Virgin Islands.
28. Notices. Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is sent by certified mail, return receipt requested, postage prepaid, personally delivered or by any overnight delivery service requiring signed acceptance, addressed to the parties as follows:

Government

Commissioner
Department of Property and Procurement
Sub Base, Building No. 1
St. Thomas, Virgin Islands 00802

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and

Commissioner
Department of Licensing and Consumer Affairs
3000 Golden Rock Shopping Center, Christiansted
St. Croix, VI 00820-4311

Contractor

Verdenia C. Baker, County Administrator
c/o Archie Satchell, Information Systems Services CIO
Palm Beach County Board of County Commissioners
301 N. Olive Avenue, 8th floor
West Palm Beach, FL 33401
(Telephone: 561-355-2823)

And

County Attorney's Office
Palm Beach County Board of County Commissioners
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401
(Telephone: 561-355-2225)

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, and all other understandings, communications, written, or oral, with respect to the services that are the subject matter of this Agreement, are merged herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.
30. Severability. In the event that any provision of this Agreement shall be held to be invalid, the validity of the remaining provisions of the Agreement shall not in any way be affected thereby.
31. Authority. The Government and Contractor acknowledge that they are each governmental entities. The Government and Contractor each warrant that its execution and delivery of this Agreement is duly authorized by law and that the Agreement when fully executed will constitute the legal, valid, and binding obligation of each party.
32. Other Provisions. Addendum I and Addendum II attached hereto are a part of the Agreement and are incorporated herein by reference. In the event of a conflict between the terms of any addenda to this Agreement and the terms of this Agreement, the terms of this Agreement shall prevail.

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33. Excusable Delays. The Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargos, and abnormally severe and unusual weather conditions.
34. Joint Preparation. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than the other.

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IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

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ATTEST:

Sharon R. Bock, Clerk & Comptroller

Palm Beach County, By Its JUL 02 2019
Board of County Commissioners

By:


Deputy Clerk

By:


Mack Bernard, Mayor

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By:


County Attorney

By:


Archie Satchell, CIO, ISS

[Palm Beach County Signature Page]

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WITNESSES:

GOVERNMENT OF THE
UNITED STATES VIRGIN ISLANDS

Magdalen A. Moani

Anthony D. Thomas 12/9/2019
Anthony D. Thomas Date
Commissioner ~~Nominee~~, Dept. of Property &
Procurement

12/13/19

Richard T. Evangelista 12/25/2019
Richard T. Evangelista, Esq. Date
Commissioner Nominee, Licensing and Consumer
Affairs

APPROVED:

Honorable Albert Bryan, Jr.
Governor, U.S. Virgin Islands

12/13/19
Date

APPROVED TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE

By: Carol E. McDermott Esq.
AAG

12/11/19
Date

[U.S. Virgin Islands Signature Page]

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