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## AMENDMENT No. 1 PROFESSIONAL SERVICES CONTRACT

2023

**THIS AMENDMENT** made as of the 24th day of May, ~~2022~~ 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. whose address is 6525 Crown Blvd # 41340, San Jose, California 95160 (hereinafter referred to as "**Contractor**").

Both parties witness to being duly authorized to execute this agreement and will attest accordingly when and where necessary.

### WITNESSETH

**WHEREAS**, pursuant to Contract No. **P014OMBT20** approved by the Governor of the U.S. Virgin Islands on January 13, 2020, the Government contracted with Contractor to provide software and other technical solutions to enhance and enable the budget process and budget book to be completed electronically; and

**WHEREAS**, pursuant to its terms, Contract No. P014OMBT20 expires January 13, 2025; and

**WHEREAS**, the parties desire to amend the Contract to change the Scope of Services in Addendum I to include additional software and support services of the Citizen Services Suite (CIT Suite) that would allow for integration of the user interfaces. CIT Suite will provide a ROI, consolidate, and organize business processes and automatically identify specific project conditions. In addition, the Contractor will also provide professional service training in 2022 for the implementation of the CIT Suite and will increase the compensation set forth in Addendum II by Two Hundred, Sixty-seven Thousand, Five Hundred Sixty Dollars and Sixty-nine Cents (\$267,560.69); and

**NOW THEREFORE**, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### TERMS AND CONDITIONS

1. Paragraph 1. Services is hereby amended by deleting all of the existing text contained therein and replacing it with the following language:

“The Contractor will provide the services described in Addendum I - Scope of Services and Addendum IA - Additional Scope of Services both attached hereto and made a part

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of this Contract. Additionally, the Contractor will provide software as described in 1<sup>st</sup> Amended Addendum II - 1<sup>st</sup> Amended Compensation Form, subject to the terms of Contractor's standard Software Services Agreement ("SSA") attached hereto as Addendum III ("Software").

2. Paragraph 3. Compensation is hereby amended by deleting all of the existing text contained therein and replacing it with the following language:  
 "The Government in consideration of the satisfactory performance of the services described in Addendum I - Scope of Services and Addendum IA - Additional Scope of Services agrees to pay Contractor a sum not to exceed Two Million, Three Hundred, Forty-one Thousand, One Hundred Seventy-Four Dollars, and Ninty-Nine Cents (\$2,341,174.99) in accordance with the provisions of 1<sup>st</sup> Amended Addendum II - 1<sup>st</sup> Amended Compensation Form attached hereto and made a part of this Contract."
3. Paragraph 22. Other Provisions is hereby amended by deleting all of the existing text contained therein and replacing it with the following language:  
 "Addendum I, Addendum IA, 1<sup>st</sup> Amended Addendum II and Addendum III attached hereto are a part of this Contract and are incorporated herein by reference."
4. The Contract is hereby amended by adding additional duties contained in the supplemental Addendum I entitled Addendum IA - Additional Scope of Services attached hereto as Exhibit "A".
5. Addendum II of the Contract is hereby amended by deleting all of the existing language contained therein and replacing it with the language contained in the new Addendum II, 1<sup>st</sup> Amended Addendum II (1<sup>st</sup> Amended Compensation Form) attached hereto as Exhibit "B".
6. This Amendment is subject to the approval of the Governor of the United States Virgin Islands and to the appropriation and availability of funds.
7. Except as expressly amended in this Amendment, all terms of the Contract remain in full force and effect.

## 8. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

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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**

Jenifer O'Neal (Mar 27, 2023 15:50 EDT)  
**Jenifer C. O'Neal, Director**  
Office of Management and Budget

3/27/2023

Date

**Lisa Alejandro, Acting Commissioner**  
Department of Property & Procurement

4/22/2023

Date

DocuSigned by:

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**CONTRACTOR**

DocuSigned by:

**Waranya Simbeck**  
**Senior Director, Financial Planning & Analysis**  
OpenGov, Inc.

3/14/2023

Date

**APPROVED:**

**Honorable Albert Bryan Jr.**  
GOVERNOR OF THE VIRGIN ISLANDS

Date:

5/24/23

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:

Assistant Attorney General

Date

4/24/2023

PURCHASE ORDER NO. 5542

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Amends Contract No. P014OMBT20

Initials: \_\_\_\_\_

# Original Contract

## CONTRACT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made this day of January 13<sup>20</sup> 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**



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 2<sup>nd</sup> 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

  
Michael B. Baker  
Sergeant

  
Jennifer O'Neal, Director  
Office of Management and Budget

12/31/19  
Date

  
Anthony D. Thomas, Commissioner  
Department of Property and Procurement

12/23/2019  
Date

CONTRACTOR

  
Paul H. Denton, CFO  
OpenGov, Inc.

  
Paul H. Denton, CFO  
OpenGov, Inc.

11/13/19  
Date

APPROVED:

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

Date: 1/13/20

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:

  
Carol A. McDonald, Esq.  
AAG

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

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