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CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 17th day of July, 2023, 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 Health (hereinafter referred to as "Government" or "DOH") and Witt O' Brien's USVI LLC (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Department of Health, is in need of the services of a Contractor to establish a Disaster Recovery Project Management Office (DR-PMO) which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the Government solicited the services under RFP 034-C-2019(P); 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.

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 one (1) year thereafter. The Government in its sole discretion, shall have the option to renew this Contract for three (3) additional periods of one-year each subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay Contractor a sum not to exceed Two Million Two Hundred Thirteen Thousand Eight Hundred Forty-Eight Dollars and Zero Cents (\$2,213,848.00) in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract.

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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, 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 \$252,000.00.

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. 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, gross receipt, excise, 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.

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10. 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 the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

Notwithstanding any contrary provision in this Contract, Contractor's liability for any and all claims arising out of or in connection with the Contract or the services shall not exceed, in the aggregate, three times the fees actually paid by the Government to Contractor within the twelve (12) months preceding the event giving rise to the claim under this Contract. Such limitation of liability shall apply even if the liability asserted is based on negligence (whether active, passive, sole, concurrent or gross), breach of duty (whether statutory, contractual or otherwise) or any other fault of Contractor or any other person or entity, and regardless of whether the claim is based in contract, tort, strict liability or otherwise; provided, however, for the avoidance of doubt, that such limitation of liability shall not apply if the liability asserted is based on fraud or willful misconduct.

11. 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.

12. 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.

13. 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.

14. ENTIRE AGREEMENT

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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.

15. 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.

16. CONDITION PRECEDENT

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

17. TERMINATION

Either party will have the right to terminate this Contract with or without cause on ninety (90) days written notice to the other party specifying the date of termination.

18. PARTIAL TERMINATION

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable by providing ninety (90) days written notice to the Contractor. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of ninety (90) day notice.

19. NON-DISCRIMINATION

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

21. 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

Lisa M. Alejandro, Acting Commissioner
Department of Property and Procurement
8201 Subbase, Suite 4
St. Thomas Virgin Islands 00802

Justa Encarnacion, RN, BSN, MBA/HCM
Commissioner
Department of Health
3500 Estate Richmond
Christiansted, VI, 00820

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CONTRACTOR

Witt O'Brien's USVI, LLC
Attn: Legal Counsel and Director Contracts & Compliance
818 Town & Country Blvd., Suite 200
Houston, Texas 77024

With a copy to: contractrequests@wittobriens.com and cjoiner@wittobriens.com

22. 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.

23. OTHER PROVISIONS

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

24. 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.

25. 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.

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26. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is 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 offence.

27. 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.

28. CONTRACTOR PROJECT PERSONNEL

- (a) Contractor shall, in writing, provide the Government with the names and qualifications, which shall include references and curriculum vitae, of all Key Personnel and Operating Personnel that will be providing services under this Contract. Key Personnel shall be subject to the approval of the Government. The Government's approval process for Key Personnel may, at the discretion of the Government, include a face-to-face interview. Once approved by the Government, Key Personnel may not be removed from the project without the prior approval of the Government. In the event the Government approves the removal of any Key Personnel, Contractor shall provide the name and qualifications, which shall include references and curriculum vitae, of the replacement Key Personnel. All replacement Key Personnel shall be subject to the approval of the Government, which approval process may, at the discretion of the Government, include a face-to-face interview. Contractor's

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- replacement Key Personnel shall be of similar caliber, and meet the same professional standards, as the members who were part of the Contractor's initial project team.
- (b) "Key Personnel" shall mean an employee of the Contractor serving in a supervisory capacity or in a position that includes any responsibility or authority to make discretionary decisions with respect to the services to be performed under this Contract. Key Personnel includes, but is not limited to, all managers.
 - (c) "Operating Personnel" shall mean any person employed by the Contractor with respect to this Contract who is not in a supervisory capacity with the authority to make discretionary decisions with respect to the services to be performed under this Contract and whose duties involve performing the specific tasks described in the scope of service under this Contract under the supervision and direction of the Contractor's Key Personnel.
 - (d) All Key Personnel assigned to this Contract shall be employees of the Contractor. Contractor may not subcontract any Key Personnel positions.
 - (e) Contractor shall assign a Key Personnel employee to act as Contractor Project Manager with respect to this Contract. The Contractor Project Manager shall have the responsibility of managing the project under this Contract on behalf of the Contractor. Also, the parties agree that any performance issues or other issues and concerns that the Government may have with respect to the Contract shall first be communicated to the Contractor Project Manager.
 - (f) The Government shall have the right to request the removal of any Key Personnel and any Operating Personnel that is an employee of the Contractor. Upon such request, Contractor shall, within THIRTY (30) days, remove the subject individual or individuals from the project and present the names and qualifications, including references and curriculum vitae, of replacement Key Personnel or Operating Personnel, as the case may be. Individuals selected to replace Operating Personnel may commence performance of their duties upon the Government's receipt of the names and qualifications of said individuals. In addition, the Government shall have the right to recommend the removal of any Operating Personnel that is a subcontractor of the Contractor. In the event the Contractor acts upon the Government's recommendation, it shall within THIRTY (30) days of the removal of such Operating Personnel subcontractor present the names and qualifications, which shall include references and curriculum vitae, of a replacement subcontractor for review by the Government. Individuals or entities selected to replace an Operating Personnel subcontractor may commence performance of their duties upon the Government's receipt of the names and qualifications of said individuals or entities. In the event any Key Personnel or Operating Personnel is removed from the project, Contractor shall re-allocate the work assignments and duties as necessary among existing personnel in order for services under the Contract to continue without abatement or interruption until replacement personnel is chosen and commences his or her duties.
 - (g) Notwithstanding any other terms of this Contract to the contrary, the provisions of this Section 28 are not subject to the Dispute Resolution provisions of Section 29 of this Contract.

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29. DISPUTE RESOLUTION

The parties agree that if any dispute arises between the parties under this Contract, the following dispute resolution procedure shall be followed:

- (a) In the event any conflict or disagreement arises under this Contract, neither party shall file any claim or suit against the other party until it has first provided written notice to the other party of the alleged dispute and submitted the dispute to mediation in the U.S. Virgin Islands.
- (b) No lawsuit claim or controversy shall be filed until the conclusion of the mediation and certification by the mediator that an impasse has been reached or until 90 days has passed, whichever comes first.
- (c) The mediation shall be conducted under the rules of the American Mediation Association and any mediator chosen by the parties must be certified by said Association.
- (d) Pending any and all dispute resolution during the 90-day mediation period set forth herein and pending any and all resolution of any lawsuit or claim filed in the event mediation is not successful, Contractor shall continue to perform work under the Contract and the Government shall, pursuant to the provisions of Addendum II to this Contract, continue to pay Contractor for such work.

30. FORCE MAJEURE

Neither Party shall be responsible for any delay or failure in performance, other than the obligation to make payments for work previously performed, to the extent that such delay or failure was caused by a force majeure event including Act of God, war, civil disturbance, governmental action, labor dispute unrelated to and without fault or negligence of the Party claiming the force majeure event, computer virus, or denial of access to the site or any other event beyond the reasonable control of the claiming Party. Performance under this Contract shall resume promptly once the cause of delay or failure ceases and an equitable adjustment shall be made to the price and/or schedule of the Services including any mobilization or demobilization costs of Contractor.

31. Federal Emergency Management Agency (FEMA) CONTRACT CLAUSES

FEMA's Standard Clauses for Contracts and Grants are set forth in Addendum III, attached hereto and incorporated herein.

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

GOVERNMENT OF THE VIRGIN ISLANDS

Justa Encarnacion
Justa E. Encarnacion, Commissioner
Department of Health

Date: 5/16/2023

Lisa M. Alejandro
Lisa M. Alejandro, Acting Commissioner
Department of Property and Procurement

Date: 5/26/2023

CONTRACTOR

Cheryl Joiner
Cheryl Joiner
Director of Contracts and Compliance
Witt O'Brien's USVI LLC

Date: 5/15/2023

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:

Carol E. McDowell Date: 5/30/2023
Assistant Attorney General

APPROVED:

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

Date: 7/17/23

PURCHASE ORDER NO. _____

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