

# VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY

## CONTRACT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT** is made this 30th day of November, 2017, in the Territory of the Virgin Islands, by and between the **VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**, (“VIPFA”) an autonomous instrumentality of, and acting on behalf of the, Government of the United States Virgin Islands, (collectively “**the Government**”) and **WITT O’BRIEN’S LLC**, of 1201 15th Street, NW, Suite 600, Washington, DC 20005 (also referred to herein as “**Consultant**”), jointly referred to herein as the “Parties”.

### WITNESSETH:

**WHEREAS**, the Governor of the United States Virgin Islands has declared a state of emergency following two category five hurricanes, Irma and Maria, pummeling the islands within two weeks of each other, destroying homes and buildings, devastating the infrastructure, adversely impacting public services, and threatening the financial stability of the Virgin Islands by eliminating revenue streams; and recognizes that it may face similar emergencies in future years.

**WHEREAS**, VIPFA and the Government of the Virgin Islands (the “Government”) have conducted a competitive negotiation process to identify and retain one or more consultants and advisers to assist the Government in coordinating its recovery efforts from recent hurricanes, and from disasters that may occur in the future, with the Federal Emergency Management Administration (“FEMA”) and other Federal agencies and ensuring that those efforts comply with applicable Federal statutes, regulations, and guidelines (“FEMA Consulting”);

**WHEREAS**, Consultant is in the business of providing FEMA Consulting, and represents that it is willing, capable and qualified to provide such services;

**WHEREAS**, the VIPFA desires to utilize Consultant’s services as provided herein.

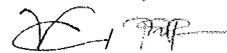
**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the Parties hereto do covenant and agree as follows:

### 1. SERVICES

The Consultant will provide the services described in Addendum I (Scope of Services) attached hereto and made a part of this Agreement (the “Services”).

### 2. TERM

This Agreement shall become effective as of the date provided in Section 19 hereof, and unless sooner terminated in accordance with Paragraph 16 (Termination) or at such earlier or later date as the Parties agree in writing by Addendum to this Agreement, shall remain in effect until the earlier of (i) the completion of the Services,



and (ii) the date falling five (5) years following the effective date of this Agreement, which date may be extended in two-year increments by mutual agreement of the Parties, to a maximum of nine (9) years following the effective date of this Agreement.

### 3. COMPENSATION

VIPFA, in consideration of the performance of the Services, shall compensate Consultant on the terms set forth in **Addendum II (Compensation and Rate Schedule) attached hereto** and made a part of this Agreement. It is agreed that compensation under this Agreement shall not in aggregate exceed fifteen million dollars (\$15,000,000.00) annually without mutual and prior agreement of the Parties.

VIPFA shall pay or reimburse Consultant for all reasonable out-of-pocket expenses incurred and properly documented by Consultant or Consultant personnel in performing the Services set forth in this Agreement including without limitation, transportation, lodging, subsistence, and communications (“**Reimbursable Expenses**”). Lodging and per diem will follow applicable U.S. Government General Services Administration (GSA) rates for the area, and VIPFA will reimburse for coach class airfare or equivalent. For the avoidance of doubt Reimbursable Expenses include costs incurred during mobilization of Consultant’s personnel to the U.S. Virgin Islands upon commencement of the Services and demobilization of Consultant’s personnel from the U.S. Virgin Islands upon conclusion of the Services (including time spent in transit to be paid at the rates set forth in Addendum II, but not to exceed four (4) hours in any one travel day).

By execution of this Agreement, VIPFA further authorizes Consultant personnel providing the Services and based in the U.S. Virgin Islands to travel to and from their city of permanent residence once per month, and confirms that reasonable expenses for such travel (including time spent in transit at the rates set forth in Addendum II, but not to exceed four (4) hours in any one travel day) shall be deemed Reimbursable Expenses under this Agreement.

### 4. RECORDS

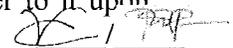
The Consultant will, upon VIPFA’s request and at such regular intervals as may be reasonably determined by VIPFA, but not more frequently than monthly, present documented, precise records of time and/or money expended under this Agreement.

### 5. PROFESSIONAL STANDARDS

The Consultant agrees to provide the Services in accordance with professional standards applicable to its profession, as provided in Addendum I (Scope of Services).

### 6. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived from the Services and pertaining to this Agreement shall become the property of VIPFA and shall be turned over to it upon



demand. The above described materials shall not be used by Consultant or by any other person or entity except upon the written permission of the VIPFA. Notwithstanding the foregoing, VIPFA acknowledges that, in the course of its performance under the Agreement, the Consultant may use products, materials, and methodologies that are proprietary to Consultant, and VIPFA agrees that it shall have no rights in such proprietary products, materials, and methodologies except pursuant to a separate written agreement (if any) executed by the Parties.

## **7. LIABILITY OF OTHERS**

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

## **8. SUBCONTRACTING AND ASSIGNMENT**

The Consultant shall not subcontract any part of the services under this Agreement without the prior written consent of VIPFA, which shall not be unreasonably withheld or delayed. Neither Party may assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other Party.

## **9. DOCUMENT RETENTION STANDARDS**

The Consultant agrees to retain documents and records for a period of seven (7) years from the date of final payment under this Agreement. Within ninety (90) days of the expiration of said period, Consultant shall provide VIPFA with notice of its intent to destroy the records. VIPFA shall provide the Consultant with notice of its demand for delivery of records before the expiration of the five years.

## **10. LIABILITY AND INDEMNIFICATION**

Consultant agrees to indemnify , defend and hold harmless **VIPFA and the Government**, for whose benefit this Agreement is entered, from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which VIPFA and or the Government may incur, sustain or be subjected to, directly related to the services performed by the Consultant under this Agreement but such obligation to indemnify, defend and hold harmless is limited to the extent caused by the negligence of Consultant, except as otherwise limited in this Agreement. This indemnification



clause is not intended to convert a claim based solely upon a breach of contract theory into a tort claim.

Consultant shall not be required to indemnify, defend, or hold harmless the VIPFA or the Government for any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which are premised, in whole or in part, on the alleged acts and/or omissions of the Government or its employees, agents, and/or officers.

In no event shall either party be liable for any exemplary, punitive, incidental, special, indirect or consequential damages of any kind, , including, without limitation, any loss of profits or revenue, loss of use of property or equipment and business interruption losses, regardless of the cause of such damages, including, without limitation, any negligence (whether active, passive, sole, concurrent or gross), breach of duty (whether statutory, contractual or otherwise) or any other fault of either party or any other person or entity, and regardless of whether the claim is based in contract, tort, strict liability or otherwise.

Notwithstanding any contrary provision in this agreement, Consultant's liability for any and all claims arising out of or in connection with the agreement or the services shall not exceed, in the aggregate, three times the fees actually paid by VIPFA and the Government to Consultant within the twelve (12) months preceding the event giving rise to the claim under this Agreement. 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 consultant 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 Consultant is an independent contractor, and neither it nor any of its personnel shall be deemed to be an employee or agent of the VIPFA. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee between VIPFA and any Consultant personnel or granting to Consultant or any of its personnel any rights under any employee benefit plan, policies or procedures of VIPFA. Unless otherwise provided herein, all matters governing the terms and conditions of employment of Consultant's personnel shall be the sole responsibility of Consultant including, but not limited to, the reporting, withholding and/or payment of all wages, benefits, unemployment, social security and other payroll taxes for its personnel. Consultant shall indemnify and hold VIPFA harmless against all liability and loss resulting from Consultant's failure to pay all taxes and fees imposed by the Government under employment insurance, social security and income tax laws with regard to Consultant's employees engaged in the performance of this Agreement.



## **12. GOVERNING LAW**

This Agreement 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.

## **13. 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 representatives and specifying with particularity the nature and extent to 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.

## **14. ENTIRE AGREEMENT; SEVERABILITY**

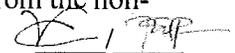
This Agreement constitutes the entire agreement between the Parties hereto, and all prior understandings or communications, written or oral, with respect to the Services, are merged herein. This Agreement may not be amended or modified except in a written instrument signed by both Parties. If any provision of this Agreement is found to be invalid or unenforceable, it shall not affect the validity and enforceability of all remaining terms and provisions of this Agreement. Additionally, if any provision of this Agreement is so broad as to be unenforceable, then such provision shall be interpreted to be only as broad as is enforceable.

## **15. RIGHT TO WITHHOLD**

If work under this Agreement is not performed in accordance with the terms hereof, VIPFA will have the right to withhold out of any payment due to Consultant, subject to advance written notice to Consultant and 10 days opportunity to cure any such non-performance, sums equal to an amount sufficient to protect VIPFA against such non-performance or to assure payment of claims arising therefrom.

## **16. TERMINATION**

This agreement may be terminated at any time by either Party, for cause or for convenience or for any reason, provided that the terminating Party provides the other with sixty (60) days' written notice. In addition, VIPFA has the right to terminate this Agreement on thirty (30) days' notice to the other in the event changed circumstances render Consultant's services unnecessary or impractical. Either Party may also terminate this Agreement upon a material breach of this Agreement which is not cured by the breaching Party within ten (10) days after receiving written notice thereof from the non-



breaching Party, with no further payment or service obligation from either Party past the date of termination. For the avoidance of doubt VIPFA's failure to pay any invoice under this agreement within sixty (60) days after its receipt thereof shall be deemed a material breach of this agreement. In any event of termination, VIPFA shall pay for services rendered through the date of termination. In the event of termination by VIPFA for any cause other than material breach, VIPFA shall pay Consultant the applicable hourly rates for its personnel until such time as each of Consultant's personnel is demobilized to their point of domicile and further, as well as all Reimbursable Expenses as set forth in Clause 3 until completion of personnel's demobilization, provided that (a) said demobilization is effected as quickly as is reasonably practicable, and (b) in no event shall VIPFA be obligated to make such demobilization-related payments for more than time and Reimbursable Expenses incurred by Consultant more than 7 days after the date of termination.

Upon receiving a notice of termination from VIPFA (a "Notice of Termination"), Consultant shall:

- (i) Stop work under this Agreement on the date and to the extent specified in the Notice of Termination, provided that such date shall not be before the expiration of the relevant notice period specified above.
- (ii) Complete the performance of such part of the work that has been specified for completion by the Notice of Termination. However, the Consultant shall not be obligated without its express consent to complete the performance of any part of the work contemplated under this Agreement, or to continue performing on such parts of the work as VIPFA may specify following the effective date of termination.

Upon termination of this Agreement in full, VIPFA may require the Consultant to return to VIPFA any property VIPFA made available for Consultant's use during the term of this Agreement.

## **17. 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 Agreement on account of race, creed, color, sex, religion, disability or national origin.

## **18. CONFLICT OF INTEREST**

- (a) Consultant covenants that to the best of its knowledge neither it nor its employees or contractors on this project have any 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 Agreement.



(b) Consultant further covenants that:

- (1) neither it nor its employees or contractors are 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) to the extent it or any of its employees or contractors are a territorial officer or employee, it or he or she has:
  - (i) familiarized it- or him- or herself 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 Agreement, in its official capacity;
  - (iii) no financial interest in the Agreement as that term is defined in section 1101 (1) of said Code chapter.

(c) VIPFA acknowledges that the Consultant provides similar services for a broad range of other clients and agrees that Consultant shall be free to work for other clients in matters that do not involve the use of any confidential information that has been disclosed by VIPFA under the terms of this Agreement or do not directly conflict with or undermine Consultant's performance of the specific Services provided by the Consultant to VIPFA under this Agreement

## **19. EFFECTIVE DATE**

This Agreement shall become effective on the date that the Agreement is ratified by a duly convened meeting of VIPFA's Board of Directors.

## **20. NOTICE**

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, with postage prepaid, or personally delivered, addressed to the Parties as follows:

**VIRGIN ISLANDS PUBLIC**

**Valdamier O. Collens**



**FINANCE AUTHORITY**                      **Executive Director**  
5033 Kongens Gade  
St. Thomas, Virgin Islands 00802

**COPY TO:**                                      **Kenneth E. Mapp**  
**Governor of the Virgin Islands**  
Government House  
St. Thomas, Virgin Islands 00802

**CONSULTANT**                                **Tim Whipple**  
**CEO**  
**Witt O'Brien's LLC**  
818 Town & Country Blvd, Suite 200  
Houston, Texas 77024  
Email: [contractrequest@wittobriens.com](mailto:contractrequest@wittobriens.com)  
with cc to [cdetillieu@wittobriens.com](mailto:cdetillieu@wittobriens.com)

**For legal notices, copy to:**  
Legal counsel  
Witt O'Brien's  
2200 Eller Drive  
Fort Lauderdale, Florida 333136  
Telephone: 954-627-5298

Notice which is hand delivered shall be deemed given upon delivery. Notice which is mailed shall be deemed given on the date signed as received on the return receipt, or within three (3) days following deposit in the U.S. Mail, postage prepaid, whichever occurs first. A Party may change the person or address for notice hereunder by providing written notice pursuant hereto.

**22. LICENSURE**

The Consultant covenants that it has complied with or is taking all necessary steps to comply with all applicable licensure, insurance and other requirements to provide the services stated herein and as described in Addendum I (Scope of Service), attached hereto. Failure by Consultant to obtain all applicable licenses and insurance within the first ninety (90) days of this Agreement shall constitute a material breach, but only to the extent such failure is due to the sole negligence of Consultant.

**23. FALSE CLAIMS**

Consultant warrants that it shall not, with respect to this Contract, make or present any claim upon or against VIPFA or the Government, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Consultant acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.



**24. NOTICE OF FEDERAL FUNDING**

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

**25. DEBARMENT CERTIFICATION**

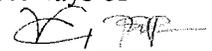
By execution of this contract, the Consultant certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Consultant shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Consultant or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Consultant or subcontractor agrees that it shall not be entitled to payment for any work performed under this Agreement or any subcontract and that the Consultant or subcontractor shall promptly reimburse VIPFA for any progress payments heretofore made.

**26. 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 Agreement 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 Consultant.

**27. CONSULTANT'S PERSONNEL**

At any time during the Term, VIPFA may, in its reasonable discretion, ask Consultant in writing to replace particular employees, contractors, agents or other personnel performing Services on Consultant's behalf. Upon receipt of such notification, which shall specify reasonable grounds for VIPFA's request, Consultant shall promptly investigate such request and if the grounds are found to be reasonable Consultant shall terminate such personnel's performance of the Services and submit to VIPFA, for VIPFA's consent, which consent shall not be unreasonably withheld or delayed, the name and credentials of each individual whom Consultant suggests as a replacement for the individual so terminated. Upon receipt of notification from VIPFA of the acceptability of such proposed replacement, Consultant shall cause such replacement promptly to commence the performance of the Services, or the applicable portion thereof. If no response is received from VIPFA, after five (5) business days of



submitting the replacement Consultant personnel resume, the personnel will be considered accepted by VIPFA.

**28. FEMA CONTRACT CLAUSES**

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

**29. OTHER PROVISIONS; ORDER OF PRECEDENCE**

Addendum I (Scope of Services), Addendum II (Compensation and Rate Schedule), and Addendum III (FEMA Standard Terms and Conditions for Contracts and Grants) attached hereto are a part of this Agreement and are incorporated herein by reference.

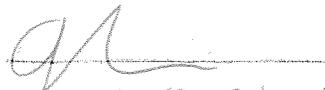
In the event of a conflict in the terms and conditions of this Agreement, the following order of precedence shall apply: (i) the FEMA Standard Clauses (Addendum III); (ii) this Agreement; (iii) the Scope of Services (Addendum I); and (iv) the Terms of Compensation and Rate Schedule (Addendum II).



IN WITNESS WHEREOF, the Parties have hereunto set their hands and seal on the date indicated.

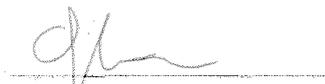
WITNESSES:

VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY

  
Geoffrey Eaton 11-30-17

By:   
Valdamier O. Collens  
Executive Director

November 30, 2017  
Date

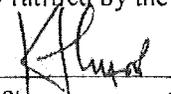
  
Geoffrey Eaton 11-30-17

  
Tim Whipple  
Chief Executive Officer

November 30, 2017  
Date

(Corporate seal, if Consultant is a corporation)

Duly ratified by the Board of Directors of the Virgin Islands Public Finance Authority

By:   
Name: Kenneth M. M. M.  
Title: Chairman

12-6-17  
Date



**ADDENDUM I**  
**SCOPE OF SERVICES**

**A. IDENTIFICATION OF SERVICES**

VIPFA and Consultant acknowledge that the Services identified herein are adapted from a Request for Qualifications for a “Consultant for Hurricane Financial Recovery and FEMA Coordination” dated as of September 10, 2017 (the “RFQ”), and from Consultant’s Statement of Qualifications responding to same, dated as of October 2, 2017 (the “Proposal”), and that the contents of the Proposal provide relevant context for the Parties’ understanding of the scope of the Services.

The Services shall consist of the tasks identified by a check mark (✓) in the table attached hereto as Addendum I-1.

**B. NONEXCLUSIVITY**

Inclusion of an identified task or role in this Scope of Services does not confer upon Consultant an exclusive right to perform said task or role, or in any way limit VIPFA’s authority to assign such tasks as it deems appropriate to such contractors as it deems appropriate.

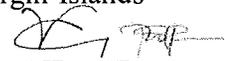
**C. REVISIONS TO SCOPE OF SERVICES**

VIPFA may direct changes within the general Scope of Services. Upon notification of such direction, the Consultant shall prepare an estimate of the additional costs and time required, if any, to perform the change. Upon mutual written agreement, Consultant shall perform the change and to the extent necessary, an equitable adjustment shall be made to the price and/or time schedule as appropriate.

**D. CONSULTANT’S RESPONSIBILITIES**

1. Consultant shall perform the Services utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions, and to require the maintenance of such standards by any employee or contractor employed by it to perform services hereunder. Consultant represents, warrants and covenants to VIPFA that it has and shall maintain during the Term the proper licenses and rights to perform the Services and shall perform the Services in compliance with any applicable laws, rules and regulations, and that all workers employed by Consultant to perform work hereunder are authorized to work and duly qualified to perform the work assigned to them.

2. Consultant will use experienced personnel to complete this engagement. Consultant shall submit proof to the satisfaction of the VIPFA that it can perform the services contracted under the laws of the United States Virgin Islands, to include its Certificate of Existence, Certificate of Insurance naming the Government of the Virgin Islands and the Virgin Islands



**CONTRACT FOR PROFESSIONAL SERVICES**

*VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY – WITT O'BRIEN'S LLC*

PAGE 13

Public Finance Authority as Additional Insureds to the extent of the liabilities assumed by Consultant under this Agreement, with limits encompassing the value of the Project, Virgin Islands Business License, and such other information as may be required.

3. Consultant shall maintain, at its own expense, in full force and effect during the Term of this Agreement, liability insurance that would reasonably be expected to cover any loss or claim that may arise from the provision of the Services to VIPFA, and provide proof thereof to VIPFA within fifteen (15) days of the Effective Date of this Contract. CONSULTANT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

4. The Consultant will provide updates of the status of the work being performed upon request by VIPFA, and at such regular intervals as may be reasonably determined by VIPFA.

5. Within 30 days of the effective date of this Agreement, Consultant shall provide to VIPFA a written plan for integrating U.S. Virgin Island residents into Consultant's performance of the Services and building local capability for performing similar services in the future. Within 90 days of the effective date of this Agreement, and from time to time thereafter, Consultant shall report to VIPFA on the number of U.S. Virgin Islands residents employed by or otherwise working for Consultant, the tasks and roles assigned such residents, and Consultant's plans for increasing its use of local residents going forward. For the avoidance of doubt, Consultant's compliance with its obligation under this clause shall not be deemed a breach of Clause D.2. above.

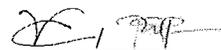
6. To facilitate prompt payment of its invoices, Consultant shall submit to VIPFA in electronic form staff time sheets for each two-week period during the week immediately following such period, so that VIPFA may review and approve time sheets throughout the month in question. At the end of each calendar month, Consultant shall summarize the given month's time sheet information as part of its monthly invoice to VIPFA.

**E. VIPFA'S RESPONSIBILITIES**

1. VIPFA, in conjunction with the Government, shall make timely payments in accordance with the terms and conditions of this Agreement.

2. VIPFA shall review and approve Consultant's bi-weekly time sheets on a prompt basis throughout each month to enable payments in accordance with the terms and conditions of this Agreement. Consultant time sheets not approved or disputed within 7 days of submission shall be deemed to be approved.

3. VIPFA shall provide work space for Consultant personnel to perform the services under this agreement, to include internet and telephone service, as well as office equipment, such as printers. VIPFA to provide name and contact information of VIPFA personnel who will coordinate the work space and equipment support, including identification badge to enter the VIPFA building. In the event VIPFA does not provide the foregoing, Consultant may procure work space and rebill the cost to VIPFA including the cost of internet, telephone, utilities, generators, and office equipment required for Consultant to perform the Services under this agreement.



4. To the extent VIPFA has access to information relating to the services to be performed, VIPFA shall provide such information as is reasonably available and appropriate for the efficient performance of the Services (“Information”). Such Information includes, but is not limited to, available site history and the identification, location, quantity, concentration and character of known or suspected hazardous conditions, wastes, substances or materials that are likely to pose a significant risk to human life, health, safety or to the environment.

5. VIPFA, in conjunction with the Government, has general oversight responsibility over the administration, management and payment of all funds, including federal funds, used during the post hurricane restoration work performed under this Agreement and has specifically retained Consultant to provide the services stated herein. VIPFA is responsible for compliance with laws, regulations, contracts, bond issuance and other financing which may be applicable, and relies upon the Consultant for its advice in this regard. VIPFA, in conjunction with the Government, shall insure that adequate funding for the project is maintained.

6. VIPFA agrees that all records, documentation, and information requested by the Consultant in connection with the Services will be made available and that the Consultant will have the full cooperation of VIPFA personnel.

7. In accordance with Title 33, Section 44 of the Virgin Islands Code, VIPFA, in conjunction with the Government, shall deduct and withhold gross receipt taxes (GRT) equal to five percent (5%) of each payment, and transmit the GRT to the Virgin Islands Bureau of Internal Revenue. A “payment” is defined as “(1) any single payment of at least \$30,000.00; and (2) any payment pursuant to a contract providing for a total expenditure of \$225,000.00 or more.”

A handwritten signature in black ink, appearing to be 'Witt O'Brien', located at the bottom right of the page.

**Addendum I-1**

**Scope of Services for Witt O'Brien's**

✓ indicates that the listed task falls within this Agreement's scope of services

**A. Track 1: Initial Tasks**

- 1. Assess damages and costs: assist the USVI to understand and quantify storm-related damages and costs, to include specific damage assessments ✓
- 2. Identify recovery sources: assist the USVI to identify potential sources of recovery
  - a. Commercial insurance and NFIP
  - b. FEMA disaster programs ✓
  - c. HUD disaster programs ✓
  - d. Other federal or private sources of funding ✓
- 3. Meeting preparation and assistance: prepare USVI representatives for meetings with FEMA/HUD and other federal agencies, insurers' ✓
- 4. Technical Assistance and Management Support for Emergency Work to Restore Critical Infrastructure and Debris Management ✓
- 5. Technical Assistance and other support to the Governor's Hurricane Recovery Task Force ✓

**B. Track 2: Recovery Process Planning and Implementation**

- 1. Organizational process development: work with USVI staff to develop and modify policies/procedures/systems in accordance with organizational needs and objectives, as well as applicable government regulations ✓
- 2. Program-specific process development: assist with the development of processes, controls and technologies to support the execution of the following federal administered programs:
  - a. Public Assistance (FEMA) ✓
  - b. Hazard Mitigation (FEMA) ✓
  - c. Individual Assistance (FEMA) ✓
  - i. Other Needs Program ✓
  - d. Community Development Block Grant – Disaster Recovery (CDBG-DR) program (HUD) ✓
  - e. Federal Highway Administration Emergency Relief (FHWA ER) ✓
  - f. other grant and assistance programs ✓
- 3. Compliance: assist USVI staff with the programmatic, policy, financial, and accounting services necessary to meet aid program requirements
  - a. FEMA
  - b. HUD
  - c. Other federal
  - d. USVI
  - e. Commercial Insurers
- 4. Housing Recovery: Support the USVI in assessing, developing, implementing and managing interim (short term) and permanent (long term) housing recovery programs ✓

**C. Track 3: Grant Application and Financial Management**

- 1. Grant application assistance: assist USVI with applications for and management of federal grants, including:
  - a. FEMA Public Assistance Program ✓
  - b. FEMA Hazard Mitigation Grant Program ✓
  - c. Community Disaster Loan(s) ✓
  - d. CDBG grants ✓
  - e. Other federal programs identified in Track 1 ✓
- 2. Grant compliance assistance:
  - a. Provide guidance on funding requirements and assist USVI to proactively identify and resolve eligibility and compliance issues.
  - b. Provide guidance on procurement and contracting compliance
  - c. Develop processes to track reconstruction and funding status for each project. ✓
  - d. Facilitate interactions and reviews of documentation by relevant parties (Insurers, FEMA, HUD, etc.) ✓
  - e. Meet with USVI departments to collect, organize and analyze costs, contracting, and other supporting documentation for each project ✓
  - f. Reconcile proceeds from funding sources to identify duplication of benefits
  - g. Provide assistance with the overall grant closeout process including responding to requests for information ✓
- 3. Audit preparation: assist USVI to prepare for inspections/audits and resolve findings, including organization of supporting documentation, advice regarding the resolution of compliance and eligibility issues and development of corrective action plans
- 4. Risk assessment and monitoring: undertake risk assessments and monitoring of projects to assist the USVI in understanding compliance related matters and appropriately steward recovery funds
- 5. Procurement assistance: provide guidance on procurement practices and assist with reviewing procurements and contracts related to the recovery effort
- 6. Dispute resolution: support USVI staff in resolving eligibility issues and disputes, if necessary, including appeal and arbitration processes ✓
- 7. Financial planning assistance: provide assistance as required to USVI staff regarding cash flow, budgetary matters, and tax implications related to the recovery which may include: cash flow forecasting, quantifying lost tax revenues, quantifying changes to expense and capital outflows, and identifying alternative revenue and expense measures

**D. Track 4: Strategic Planning**



**CONTRACT FOR PROFESSIONAL SERVICES**

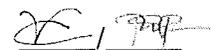
*VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY – WITT O'BRIEN'S LLC*

PAGE 16

- 1. Strategic recovery planning: provide strategic planning and coordination of financial recovery efforts related to federal disaster relief programs and commercial insurance ✓
- 2. Mitigation and resiliency planning: assist in identifying mitigation projects for which USVI may seek grant funding in order to mitigate against future damage and build resiliency ✓
- 3. Comprehensive long-term recovery planning: assist USVI in the creation and implementation of a long term recovery plan if requested ✓
- 4. Emergency management planning: Assess the current emergency management plans, policies and procedures and assist with the development of new procedures and provide training, as needed ✓
- 5. After-Action Reviews: Conduct After-Action Reviews, Develop Improvement Recommendation Reports and Convene Forums covering both public and private entities related to response to and recovery from Hurricanes Irma and Maria ✓

**E. Other related services as requested by USVI**

TBD



**ADDENDUM II**  
**TERMS OF COMPENSATION & RATE SCHEDULE**

Following execution of this Agreement and ratification by VIPFA's Board of Directors, VIPFA agrees to pay the Consultant such amounts as are duly invoiced by Consultant to VIPFA for the performance of the Services pursuant to the Rate Schedule below, including Reimbursable Expenses as set forth in Clause 3 of this Agreement, provided that the amounts paid hereunder shall not in aggregate exceed fifteen million dollars (\$15,000,000.00) annually without mutual and prior agreement of the Parties.

VIPFA further agrees to pay the Consultant such amounts as are duly invoiced by Consultant to VIPFA for the performance of services provided by approved subcontractors to Consultant. Payment for subcontractor services shall be made to Consultant in accordance with the pricing set forth in Consultant's request for VIPFA's approval of such subcontractor services. For the avoidance of doubt, amounts paid for work performed by subcontractors shall count against the \$15,000,000 annual cap.

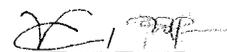
Consultant shall invoice for billable time electronically for each calendar month after the end of the given calendar month. Payment is due net 15 days after receipt of such invoice. Invoices for reimbursable expenses (as defined in Clause 3 of this Agreement) will be submitted electronically monthly in arrears and payment is due net 15 days after receipt of such invoice. All invoices shall include information required to comply with the Federal laws, regulations, and policies governing Federal reimbursement of disaster recovery-related expenditures. Invoices are considered accepted by VIPFA unless a written notice explaining rejection of specific charges is provided to Consultant within ten (10) days. Consultant shall be entitled to interest on any overdue amounts at the rate of 1.5% per month or at the maximum rate allowed by applicable law, whichever is lower.

Consultant shall apply the following hourly rates to its staff delivering the Services under this Agreement:

| Rate Schedule          |             |
|------------------------|-------------|
| Title                  | Hourly Rate |
| Principal              |             |
| Senior Project Manager |             |
| Project Manager        |             |
| Recovery Consultant 6  |             |
| Recovery Consultant 5  |             |
| Recovery Consultant 4  |             |
| Recovery Consultant 3  |             |
| Recovery Consultant 2  |             |
| Recovery Consultant 1  |             |

|                 |  |
|-----------------|--|
| Administrator 2 |  |
| Administrator 1 |  |

The hourly rates shown in the above Rate Schedule shall be subject to a 3% inflation factor on an annual basis (the inflated rates being the "Adjusted Rates"), with the first adjustment taking effect 1 January 2019 and subsequent adjustments taking effect on January 1 of each succeeding year until the Services are complete or this Agreement terminated. Not later than December 1 of each calendar year, beginning on December 1, 2018, Consultant shall notify VIPFA in writing of the Adjusted Rates for the forthcoming year.



**ADDENDUM III**

**FEMA STANDARD TERMS AND CONDITIONS FOR CONTRACTS AND GRANTS**

The Parties shall comply with all federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to the contractual procedures set forth in Title 2 of the Code of Federal Regulations, Part 200 ("2 CFR 200"), including Appendix II to such Part ("Appendix II").

In addition, the Parties agrees as follows:

1. VIPFA confirms that it is entitled to exercise all administrative, contractual, or other remedies permitted by law to enforce Consultant's compliance with the terms of this Agreement, except to the extent expressly provided otherwise by this Agreement.
2. VIPFA confirms that it may terminate this Agreement for cause or convenience in accordance with the procedures set forth in this Agreement.
3. Compliance with the Davis-Bacon Act and Copeland Anti-Kickback Act.
  - a. Contractor. Consultant shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Agreement.
  - b. Subcontracts. Consultant and any subcontractors to Consultant shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontractors. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
  - c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR §5.12.
4. Compliance with the Clean Air Act and the Federal Water Pollution Control Act.
  - a. Clean Air Act
    - (i) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §7401 et seq.
    - (ii) Consultant agrees to report each violation to VIPFA and understands and agrees that VIPFA will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.



(iii) Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

b. Federal Water Pollution Control Act

(i) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(ii) Consultant agrees to report each violation to VIPFA and understands and agrees that VIPFA will, in turn, report each violation as required to assure notification to FEMA and appropriate Environmental Protection Agency Regional Office.

(iii) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

5. Suspension and Debarment

a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Consultant is required to verify that none of Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

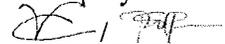
c. This certification is a material representation of fact relied upon by VIPFA. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to VIPFA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. Compliance with Byrd Anti-Lobbying Amendment

a. Consultant hereby certifies to the best of its knowledge that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee



of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

b. Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

c. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

d. By executing this Agreement, Consultant hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Consultant understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

## 7. Procurement of Recovered Materials

a. In the performance of this contract, Consultant shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;



(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

8. Access to Records

The following access to records requirements apply to this Agreement:

a. Consultant agrees to provide VIPFA, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c. Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

9. Use of DHS Seal

Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

10. Compliance with Federal Law

This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. Consultant will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11. Non-Obligation of Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

12. Program Fraud and False or Fraudulent Statements or Related Acts

Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

