

From: **Whittaker, Frank M** <[frank.m.whittaker@wv.gov](mailto:frank.m.whittaker@wv.gov)>  
Date: Tue, Mar 1, 2022 at 2:30 PM  
Subject: Fwd: FW: Memo for SVRS Consultant- Emergency  
To: <[KaylaH@wvsos.com](mailto:KaylaH@wvsos.com)>  
Cc: Toby L Welch <[toby.l.welch@wv.gov](mailto:toby.l.welch@wv.gov)>, Linda Harper <[linda.b.harper@wv.gov](mailto:linda.b.harper@wv.gov)>, Totten, Mark L <[mark.l.totten@wv.gov](mailto:mark.l.totten@wv.gov)>

Kayla,

Your emergency request for consulting services for the SVRS system consulting services is approved for the period of March 1 through May 31 for an estimated cost not to exceed \$50,000.00, is approved. This approval is not an approval for the services of any specific vendor or provider. Please follow the emergency procedures outlined in the Purchasing Division handbook and return all supporting documentation to this office within 30 days of this approval for processing.

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**Frank Whittaker, CPPB, NIGP-CPP**  
Assistant Director  
West Virginia Purchasing Division  
2019 Washington Street, East  
Charleston, WV 25305  
(304) 558-2316  
[frank.m.whittaker@wv.gov](mailto:frank.m.whittaker@wv.gov)

----- Forwarded message -----  
From: **Welch, Toby L** <[toby.l.welch@wv.gov](mailto:toby.l.welch@wv.gov)>  
Date: Tue, Mar 1, 2022 at 2:07 PM  
Subject: Fwd: FW: Memo for SVRS Consultant- Emergency  
To: Frank M Whittaker <[frank.m.whittaker@wv.gov](mailto:frank.m.whittaker@wv.gov)>

thanks

----- Forwarded message -----  
From: **Kayla Hill** <[KaylaH@wvsos.com](mailto:KaylaH@wvsos.com)>  
Date: Tue, Mar 1, 2022 at 1:56 PM  
Subject: FW: Memo for SVRS Consultant- Emergency  
To: Welch, Toby L <[toby.l.welch@wv.gov](mailto:toby.l.welch@wv.gov)>

Toby,

The fourth attachment down is the updated memo for the emergency purchase.

As he states below I guess he did not send it to me yet because he thought he had to wait for the vendor to sign off on it. If that is correct, then he is still waiting for their approval.

Kayla Hill  
*Finance & Procurement Specialist*  
**West Virginia Secretary of State's Office**  
[304-558-8000](tel:304-558-8000) (Office)  
[304-558-0900](tel:304-558-0900) (Fax)

**From:** Chuck Flannery <[CFlannery@wvsos.com](mailto:CFlannery@wvsos.com)>

**Sent:** Tuesday, March 1, 2022 1:41 PM

**To:** Kayla Hill <[KaylaH@wvsos.com](mailto:KaylaH@wvsos.com)>

**Cc:** Delilah M. Barker <[DBarker@wvsos.com](mailto:DBarker@wvsos.com)>

**Subject:** RE: Memo for SVRS Consultant- Emergency

This is sent to the vendor for review. If the vendor approval is not necessary then please feel free to share these docs with Purchasing.

Chuck

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**Toby L. Welch, Buyer**  
West Virginia Purchasing Division  
2019 Washington Street East  
Capitol Complex Building 15  
Charleston, WV 25305  
304-558-8802 ext 57522  
[Toby.L.Welch@wv.gov](mailto:Toby.L.Welch@wv.gov)

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MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
WEST VIRGINIA SECRETARY OF STATE'S OFFICE  
AND  
TGS TECHNOLOGY, LLC  
REGARDING  
SECRETARY OF STATE ELECTION TECHNOLOGY AND DATA SERVICES

**THIS MEMORANDUM OF UNDERSTANDING**, dated this 1st day of March, 2022, is by and between the West Virginia Secretary of State's Office (WVSOS) and TGS Technology, LLC (TGS).

**WHEREAS**, WVSOS, as chief election official of the state, is responsible for implementing, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state as provided by W. Va. Code § 3-2-3(b);

**WHEREAS**, TGS generally is a technology company that provides consulting services to clients for, in part, networks of connected physical devices or objects that have the ability to collect and transfer data over a network without any manual interference by covering sensors, gateways, cloud, connectivity, user experience and analytics that enhance efficiency and reduce maintenance and other operation costs;

**WHEREAS**, WVSOS is in the process of upgrading its single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level, which is commonly referred to as the Statewide Voter Registration System (SVRS);

**WHEREAS**, TGS employs two (2) persons, namely Keval Patel and Sachin Shetty, who were previously employed by the WVSOS third-party vendor for the SVRS, CIVIX, formerly known as PCC Technologies, Inc., which system was initially developed, programmed, managed, and maintained directly by said TGS employees, and which system is currently undergoing a major upgrade that must be substantially complete and functional for use in the 2022 election cycle;

**WHEREAS**, WVSOS requires the specialized knowledge and expertise of the TGS employees to ensure that the State's critical infrastructure election subsector is not vulnerable to a possibility of a third-party vendor's non-compliance with the contractual deadlines for the 2022 election;

**WHEREAS**, without such consulting services by TGS to WVSOS the state and counties may suffer irreparable harm in missing the timeframes required under Chapter 3 of the West Virginia Code.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH:** That for and in consideration of the mutual covenants and conditions hereafter set forth, the parties hereby agree as follows:

I. Terms:

- a. WVSOS and TGS fully incorporate herein the attached Statement of Work defining roles, duties, and responsibilities of the parties, the cost schedule for each defined TGS role, and term of the agreement including optional renewals;
- b. TGS monthly invoices shall be submitted to WVSOS monthly and paid by WVSOS only upon written confirmation that all deliverables charged for and hours worked reflected in each invoice by TGS are accurate;
- c. WVSOS and TGS agree that any and all data and system permissions, access, use, and other deliverables provided to WVSOS are the sole property of WVSOS;
- d. WVSOS shall not be liable to TGS for damages or other claims resulting from any services provided under this agreement or the Statement of Work, including any claims for violation of non-compete agreements or the equivalent;
- e. In the event that TGS discovers a defect or inaccuracy in any data or systems accessed, utilized, viewed, or otherwise subject to services under this agreement or the Statement of Work, TGS shall promptly notify WVSOS of the defect or inaccuracy. The parties may amend this agreement to reflect any subsequent agreements to accommodate unintended mitigation plans or reporting;
- f. TGS shall keep all data, knowledge, and information pertaining to all services and systems accessed, utilized, viewed, or otherwise subject to services or made known, whether intentionally or unintentionally, during the course of this agreement or the Statement of Work, completely confidential for all parties without exception unless compelled to do so by a court of competent jurisdiction upon receipt of a certified, valid subpoena or equivalent legal instrument;
- g. TGS shall agree to the terms included in the attached statutorily mandated WV-96 form required for all West Virginia agency contracts.

II. Duration: This agreement will begin on March 1, 2022 and will end on May 31, 2022 unless modified or replaced by another written agreement between the Parties.

III. Amendments: Any amendment to this agreement shall be in writing and signed by the authorized representatives of both parties.

IV. Representatives and Contacts: WVSOS and TGS designate the following individuals as representatives and points of contact for this agreement. WVSOS and TGS agree to update representatives and points of contact as necessary.

**WVSOS Administrative Contact:**

Chuck Flannery  
Chief of Staff, Deputy Secretary of State  
West Virginia Secretary of State's Office  
State Capitol, Bldg. 1, Ste. 157-K  
Charleston, WV 25305  
304-558-6000 (office main)  
cflannery@wvsos.gov

**WVSOS Technical Contact:**

Dave Tackett  
Chief Information Officer  
West Virginia Secretary of State's Office  
State Capitol, Bldg. 1, Ste. 157-K  
Charleston, WV 25305  
304-558-6000 (office main)  
dtackett@wvsos.gov

**TGS Contact:**

Keval Kumar Patel  
Chief Executive Officer  
TGS Technology, LLC  
1920 Abbotts Creek Road  
Waxhaw, NC 28173  
704-268-9601 (office main)  
kpatel@tgstechnology.com

**IN WITNESS THEREOF**, the parties have caused this Memorandum of Understanding to be executed by their undersigned authorized representatives, as of the date first written above.

WEST VIRGINIA SECRETARY OF STATE'S OFFICE

By:   
\_\_\_\_\_  
Chuck Flannery, Chief of Staff, Deputy Secretary of State

TGS TECHNOLOGY, LLC

By: \_\_\_\_\_  
Keval Patel, Chief Executive Officer

## STATEMENT OF WORK

BY AND BETWEEN

THE WEST VIRGINIA SECRETARY OF STATE'S OFFICE

AND

TGS TECHNOLOGY, LLC

THIS STATEMENT OF WORK ("SOW") IS PURSUANT TO AND IT GOVERNED BY THE MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE WEST VIRGINIA SECRETARY OF STATE'S OFFICE ("WVSOS"), HAVING ITS PRINCIPAL PLACE OF BUSINESS AT West Virginia State Capitol, 1900 Kanawha Blvd. E, Building 1, Suite 157-K, Charleston, WV 25305, AND TGS TECHNOLOGY, LLC ("TGS"), HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 1920 Abbotts Creek Road, Waxhaw, NC 28173 (HEREINAFTER REFERRED TOGETHER AS "PARTIES"), ENTERED INTO ON MARCH 1, 2022.

Project / Work Request Name: WV ELECTION TECHNOLOGY AND DATA SERVICES

### 1. OBJECTIVE

The WVSOS is requesting TGS to provide a team of subject matter experts with data conversion/data migration expertise, technical architects, and engagement leads to support this SOW. This SOW is expected in fixed capacity mode whereby TGS provides fixed support capacity (number of resources), and WVSOS determines specific tasks and deliverables that can be supported with the available capacity.

### 2. SCOPE AND SERVICES

WVSOS seeks TGS to perform the following services:

- a. Assessing the existing functionality in the Statewide Voter Registration System (SVRS);
- b. Consulting WVSOS on SVRS system functionality;
- c. Assessing and consulting WVSOS on data accuracy in SVRS and all other systems and data sources integrated for use in connection with the SVRS, which data include but are not limited to voter districts, streets, and residence addresses;
- d. Identifying needs for system configuration or customization;
- e. Consulting WVSOS on the development of functional requirements and specifications documentation, including business rules and workflows;
- f. Consulting WVSOS on User Acceptance Testing and change management
- g. Assisting and consulting WVSOS regarding identified data anomalies;
- h. Assisting WVSOS with development of scripts as backup/mitigation for implementing statewide redistricting efforts under required timeframe for 2022 Election cycle;
- i. Consulting WVSOS on current system maintenance issues;
- j. Provide ongoing updates and track progress;
- k. Facilitate consultation for business process design and development sessions with subject matter experts for identifying and consulting on technical and business objectives; and
- l. Provide WVSOS timely consultation for problem resolution and technical requirements.

### 3. ENGAGEMENT STAFFING

The engagement will be led by TGS client partner who will provide overall quality and oversight of the engagement. TGS will assign the appropriate resources for the engagement. Throughout the term of the SOW, TGS may add, substitute, or remove resources as it believes to be appropriate to perform this SOW. TGS will provide resources working under the supervision of WVSOS Division Directors. TGS proposes the appropriate resource based on their experience in delivering the required services.

WVSOS to provide a maximum of 4 weeks' lead time to TGS to ramp-ups (new on-boarding, onsite and remote) resource assignments and a maximum of 2 weeks' notice period should be given for ramp downs (releases), remote and onsite resources.

#### Remote:

- a. Subject Matter Expert
- b. Technical Architect
- c. Data Developer
- d. Developer
- e. Engagement Leader

#### Onsite:

- f. Due to the COVID-19 pandemic, Engagement Leader is not expecting to travel until further notice. Upon WVSOS request, Consultant will resume travel when public health officials, government officials, WVSOS, and Consultant deem it to be safe to travel.

#### Expected skills needed for service delivery by TGS include but not limited to:

- g. Experience in implementing Election Management Systems.
- h. Experience working with Secretary of State agencies.
- i. Experience in agile project development methodology.
- j. Strong project and process management skills in a technical environment.
- k. Ability to work independently and a member of a multi-functional team.
- l. Expert in Application Design and Integration.
- m. Experience in JEE technologies and SQL.

### 4. ASSUMPTIONS AND AGREEMENTS

- a. Services to be provided on a contract basis, TGS is not required to report itemized hours;
- b. Due to the COVID-19 pandemic, Engagement Leader is not expecting to travel until further notice. Upon WVSOS request, Consultant will resume travel when public health officials, government officials, WVSOS, and Consultant deem it to be safe to travel.
- c. The expectation for any remote resources is not to travel to WVSOS sites or if required, WVSOS will incur the extra cost for the travel.
- d. Time and Material will be charged as per Section 8 of the SOW, not to exceed \$50,000.00 unless otherwise agreed to in writing signed by the Parties.

- e. WVSOS will designate stakeholders or point of contact for TGS to work with regarding the services under this SOW;
- f. WVSOS stakeholder or point of contact will manage coordination of IT resource discussions, information, and data requests;
- g. WVSOS is responsible for providing the appropriate operational and technology resources and information required to complete the services under this engagement SOW;
- h. WVSOS will respond to all queries to the best of its knowledge;
- i. When appropriate, WVSOS will grant TGS consultants subsequent to confidentiality agreement execution with remote access with necessary security controls and requirements, physical access, or documentation access privilege as required to meet the delivery objectives; and
- j. WVSOS will provide timely and able access to subject matter experts throughout the engagement.

**5. OTHER REQUIREMENTS**

TGS agrees to execute the West Virginia required WV-96 form regarding general terms and conditions for all state contracts. This requirement is statutory and nonnegotiable.

**6. ENGAGEMENT TIMING**

The engagement begins on March 1, 2022 and will be completed by May 31, 2022.

**7. MILESTONES AND DELIVERABLES**

The milestones and deliverables are determined by WVSOS program manager in consultation with TGS Engagement Leader and consultants who are part of this engagement.

#	Milestone Name	Month	Deliverables
1	Deliverable 1	March 2022	Monthly Progress Report
2	Deliverable 2	April 2022	Monthly Progress Report
3	Deliverable 3	May 2022	Monthly Progress Report

**8. COST**

Role	Billing Rate / Time	Role	Billing Rate / Time
Engagement Leader	\$140 / hour	Developer	\$105 / hour
DBA	\$130 / hour	Trainer	\$95 / hour
SME	\$110 / hour	Project Manager	\$120 / hour
System Analyst/QA/BA	\$95 / hour	Travel/Onsite	\$1500 / day



TGS will submit monthly invoices for the milestones and deliverables and the payment terms will be as per the Memorandum of Understanding. The total price of (not to exceed) \$50,000.00 has been spread across the duration of the SOW.



IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on 3/1/2022 and effective as of 3/1/2022 by their duly authorized representatives.

West Virginia Secretary of State

TGS Technology, LLC.

Sign:

A handwritten signature in black ink, appearing to read "Chuck Flannery".

Sign:

Name: Chuck Flannery

Name: Keval Kumar Patel

Title: Chief of Staff, Deputy Secretary of State

Title: Chief Executive Officer

Date: February 17, 2022

Date:

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, County, Board, or Commission (the "Agency"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The Agency and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendors' form(s), however, include(s) one or more contractual terms and conditions that the Agency cannot or will not accept. In consideration for the Agency's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in the Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance. Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the Agency may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The Agency reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the Agency agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the Agency to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the Agency to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the Agency shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the Agency to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the Agency to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the Agency to bear the costs of all or a majority of business/legal risks associated with this Contract to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the Agency to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The Agency will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the Agency to waive any rights, claims or defenses is hereby deleted.
12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the Agency may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the Agency's prior written consent, which will not be unreasonably delayed or denied. The Agency reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the Agency. Any assignment will not become effective and binding upon the Agency until the Agency is notified of the assignment, and the Agency and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the Agency to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.

17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the Agency expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.

18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. Agency contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the Vendor at the Agency's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the Agency against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.

20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~striketrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

Agency: \_\_\_\_\_

Vendor: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_