

PROFESSIONAL SERVICES CONTRACT AND RETAINER AGREEMENT

THIS AGREEMENT is made this 25th day of August, 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 Virgin Islands Bureau of Corrections ("BOC") and the Virgin Islands Department of Justice, Office of Attorney General ("OAG"), (hereinafter referred to as "Government") and Butler Snow LLP (hereinafter referred to as "Contractor" or "Firm").

WITNESSETH

WHEREAS, the Government is in need of the services of the Firm to assist the BOC and OAG by providing expert and specialized legal representation in connection with certain legal matters, including long-standing litigation styled as Carty, et al. v. Albert Bryan, et al., in the United States District Court of the Virgin Islands, Division of St. Thomas and St. John, Case No. 3:94-cv-00078-RAM-RM ("Carty"), and United States v. Territory of the Virgin Islands, in the United States District Court of the Virgin Islands, Division of St. Croix, Case No. 1:86-cv-00265 ("U.S. DOJ" and, together with Carty, the "Litigation"); and

WHEREAS, pursuant to Title 3 V.I.C. § 114(6), the Attorney General of the Virgin Islands shall appear for and represent the Executive Branch of the Virgin Islands Government in all legal proceedings; and

WHEREAS, in accordance with 31 V.I.C. § 239(a) (8) and subsection (5) of Title 3 V.I.C. § 114, the Attorney General may "employ such skilled experts . . . or specially qualified persons as he deems necessary to aid in the preparation of trial of actions of proceedings"; and

WHEREAS, the Firm represents that it is qualified and is willing and capable of providing such services in the Litigation and accepts the Government's appointment as Special Assistant Attorney General pursuant to 3 V.I.C. § 114(5) and the terms of this Contract and Retainer Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this Contract, 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

The term of this Contract shall be from April 1, 2023 to March 31, 2024. Upon the date of execution of this Contract by the Governor of the U. S. Virgin Islands, this Contract shall become effective for the Term set out herein. The Government in its sole discretion, shall have the option to renew this Contract for a period of one (1) additional year subject to the same terms noted herein, by providing the Contractor with sixty (60) days written notice of the Government's election to renew. Nothing in this Contract shall preclude any party from terminating this Contract in the event

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of any material breach of its terms and/or as required or allowed by this Contract and/or the applicable rules of professional conduct.

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 **ONE MILLION DOLLARS and 00/100 DOLLARS (\$1,000,000.00)** in accordance with the provisions set forth in Addendum II (Compensation) attached hereto and made a part of this contract. The Contractor will notify BOC when it exceeds \$800,000.00, in fees, expenses, and other costs under this Agreement in any given year. Nothing herein shall obligate the Firm to provide any services beyond the amount of compensation enumerated above, unless agreed to in writing by the parties.

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 BOC. 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 N/A (\$ N/A).

5. RECORDS

The Contractor when applicable, will present documented precise records of time and/or money expended under this Contract pursuant to Addendum II (Compensation).

In the course of its performance of this Contract, the Firm will not utilize any non-public documents or materials received from the OAG or the Government for any purposes other than its representation of the Government, except upon the written permission of the Government. Following termination of this Agreement, any otherwise nonpublic information the Government supplied to the Firm will be kept confidential in accordance with applicable rules of professional conduct. At the Government's request, its papers and property will be returned to the Government promptly upon receipt of payment for all outstanding attorneys' fees, expert consultants' or witnesses' fees, court costs, and all other expenses and costs of whatever nature concerning or relating to the Litigation. The Firm's files concerning or relating to the Litigation will be retained by the Firm consistent with Firm policies and the rules of professional conduct. These Firm files include, for example, firm administrative records; time and expense reports; personnel and staffing materials; credit and accounting records; and attorney work product such as drafts, notes, memoranda, correspondence, legal and factual research, and investigative reports. All data, documents, and other materials retained by the Firm will be transferred to the person responsible for administering its records retention program.

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The Firm shall maintain records pertaining to the performance of services under this Contract for a period of SIX (6) years after the date of receipt of final payment for the performance of services under this Contract, or such other time as may be subsequently required by Firm policy and/or the applicable rules of professional conduct. However, this record retention requirement shall not extend to the originals of any data, documents, or other materials delivered or returned by the Firm to the Government's custody.

6. PROFESSIONAL STANDARDS

In performing under this Contract, the Firm shall comply with the rules of professional conduct applicable in the jurisdictions in which each attorney is currently licensed to practice, as well as the rules of professional conduct applicable to attorneys admitted to practice *pro hac vice* before the United States District Court of the Virgin Islands.

The Firm hereby represents and warrants that all attorneys providing services under this Contract are in good standing to practice law in the respective jurisdictions in which each attorney is currently licensed and the federal court presiding over the Litigation, and they shall remain so throughout the term of this Contract. OAG shall be immediately notified should any attorney providing services, or who provided services, is decertified, suspended, or otherwise loses the status of good standing to practice law. The parties acknowledge and agree that maintaining good standing to practice law of all attorneys performing services under this Contract is an express condition to this Contract and the failure to do so serves as a basis for immediate termination of this Contract.

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 Government to persons, firms, associations, or corporations engaged by the Firm as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations, and taxes of the Firm of whatever nature, including, but not limited to unemployment insurance and social security taxes for the Firm, its servants, agents or independent contractors.

9. ASSIGNMENT

The Firm shall not subcontract or assign any part of the services under this Contract without the prior written approval of the Government.

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.

Contractor's liability under this paragraph shall be limited to the insurance coverage limits referenced in paragraph 28 below. With respect to any situation that might trigger a request for indemnification under this paragraph, Government agrees to promptly notify Contractor of such situation, to promptly provide all information reasonably requested by Contractor regarding such situation, and to authorize Contractor to undertake and/or direct the defense of Government with respect to any third-party claim.

Nothing contained in this indemnification obligation shall apply to or create any payment obligation upon the Firm to reimburse the Territory for any fine, sanction, penalty or other liability arising from the Territory's non-compliance (actual or alleged) with any court order, consent decree or other legal requirements in the Litigation.

11. INDEPENDENT CONTRACTOR:

The Firm shall perform its obligations under this Contract as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Consistent with this relationship, OAG shall supervise the Firm's work in the performance of the services under this Contract and shall review and approve all work product prepared by the Firm in the course of its performance.

12. GOVERNING AND APPLICABLE LAW

This Contract shall be construed and governed by the laws of the U.S. Virgin Islands, and jurisdiction shall remain in the United States Virgin Islands including any disputes hereunder, with exclusive venue in the Virgin Islands.

13. WAIVERS AND AMENDMENTS

No waiver, modification, or amendment of any term, condition, or provisions 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 representative, and specifying with particularity the nature and extent of such waiver, modifications, 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 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.

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14. ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this Agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this agreement, whether written or oral.

15. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, the Government may withhold out of any payment due to the Firm, such sums as the Government deems ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Firm in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the Government if and while the Firm gives satisfactory assurance to the Government that such claims will be paid or defended by the Firm and/or its insurance carrier, if applicable, in the event that such dispute is not successfully resolved.

16. CONDITION PRECEDENT

To the extent that there is a requirement for admission to practice, whether by license or *pro hac vice*, the Firm shall comply with such legal requirements. This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor of the U.S. Virgin Islands. In the event that the Government receives any information that it may not be able to appropriate adequate funds to proceed under this Contract and/or the necessary approvals, then the Government will promptly notify the Firm.

17. TERMINATION

Either party will have the right to terminate this Contract with or without cause on Thirty (30) 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 Thirty (30) 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 the Thirty (30) day notice.

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19. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability, or national origin.

20. CONFLICTS OF INTEREST

- (a) The Firm covenants and warrants that it does not possess any interest and will not acquire any interest, direct or indirect, that 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 issued when the same is sent via certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lisa Alejandro
Commissioner Nominee
Department of Property and Procurement
SubBase, Building No. 1
St. Thomas, VI 00802

Wynnie Testamark
Director
Bureau of Corrections
Plot #1 Negro Bay – William D. Roebuck
Industrial Park
Frederiksted, VI 00840

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Ariel M. Smith, Esquire
Attorney General Nominee
Virgin Islands Department of Justice
3438 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, VI 00802

CONTRACTOR/FIRM
William R. Lunsford, Esq.
Butler Snow LLP
200 West Side Square
Huntsville, AL 35801

22. DISPUTES

All disputes or matters hereunder will be resolved by a certified mediator acceptable to both parties. The costs of such mediation shall be split equally among the parties. In the event that mediation is not successful either party has the right to present their claims in a court of law in the U.S. Virgin Islands, pursuant to paragraph 12, Governing and Applicable Law.

23. LICENSURE

The Firm covenants and agrees that, upon execution of this Contract and prior to performance of any obligations under this Contract, the Firm will familiarize itself with and, if necessary, obtain all licenses, permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code.

24. OTHER PROVISIONS

Addenda I and II attached hereto are a part of this Contract and are incorporated herein by reference, including Exhibits A and B.

25. 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.

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26. 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.

27. 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.

28. 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:** Throughout the duration of the Agreement, the Firm will maintain an existing insurance policy with an aggregate coverage in excess of Twenty Five Million and 00/100 Dollars (\$25,000,000.00), providing coverage for any acts or omissions of the Firm, its agents and/or its employees during the course of the Firm's engagement in the Litigation, including, but not limited to, coverage for any suits, actions, claims, losses, damages, liabilities, demands, detriments, costs, charges and/or expenses (including attorneys' fees) and causes of actions arising out of or connected to the services to be performed by the Firm, its officers, agents, subcontractors, servants, employees or assigns. The Firm shall confidentially provide documentation reasonably evidencing the required insurance coverage upon request by OAG and all such documentation shall be maintained as confidential by OAG.
- (c) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

29. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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

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

BY: GOVERNMENT OF THE VIRGIN ISLANDS

WITNESS:





Wynnie Testamark
Director
Bureau of Corrections

6/7/2023
Date

WITNESS:




Ariel M. Smith, Esquire
Attorney General
Department of Justice

7/13/2023
Date

WITNESS:

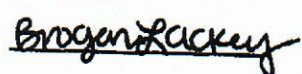



Lisa Alejandro
Commissioner Nominee
Department of Property & Procurement

7/7/2023
Date

BY: BUTLER SNOW LLP

WITNESS:




William R. Lunsford, Esquire
Shareholder/Authorized Representative for the Firm
(Corporate seal, if Contractor is a corporation)

6/3/23
Date

APPROVED AS TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE BY:  7/14/2023
Assistant Attorney General Date

APPROVED: 

8/25/23

Albert Bryan Jr.
Governor, US Virgin Islands

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