



CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this _____ day of _____, 20____, 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 (hereinafter referred to as "Government") and OTB Innovations, LLC (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a subject matter professional, pursuant to the terms of a Settlement Agreement ("Agreement"), to serve as an independent, court-appointed expert in the matter of *Lawrence Carty, et al. v. Albert Bryan, Jr., et al.*, Civil No. 1994-78 (the "Case"), which duties and responsibilities are more particularly described in Addendum I (Scope of Services) attached hereto; and

WHEREAS, the Contractor was selected in accordance with 31 V.I. C. § 239(a)(8); the selection process described under Section VIII. Monitoring of the Agreement; and

WHEREAS, the Contractor represents that it is willing and capable of providing such services; and

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

1. SERVICES

The Contractor will provide the services described in Addendum I (Scope of Services), attached hereto and made a part of this contract.

2. TERM AND EFFECTIVE DATE

This Contract shall be effective upon the date of execution by the Governor of the United States Virgin Islands and shall terminate three years (3) thereafter ("Initial Term"). The Government, in its sole discretion, shall have the option to renew this contract for two (2) additional period of one (1) 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.

3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Scope of Services), agrees to pay the Contractor a sum not to exceed One Million

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Dollars and Zero Cents (\$1,000,000.00) in accordance with the provisions set forth in and Addendum II (Compensation), attached hereto and made a part of this contract.

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, related to any compliance assessment, technical assistance, testimony or other tasks related to the Agreement. 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 compensation as outlined in Addendum II.

5. RECORDS

The Contractor, when applicable, will present documented precise records of time and/or money expended under this Contract.

6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to consultants doing business in the United States Virgin Islands.

7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts, and memoranda of every description derived therefrom and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described material shall not be used by Contractor or by any other person or entity except upon the written permission of the Government. Notwithstanding the foregoing, the Contractor retains rights to its non public financial records and other proprietary information, and the Government will not have right to inspect or copy that information.

8. LIABILITY OF OTHERS

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

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9. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this Contract without the prior written consent of the Government, which shall not be unreasonably withheld.

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.

11. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

12. GOVERNING LAW

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

13. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition, or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

14. ENTIRE AGREEMENT

This contract constitutes the entire agreement of the parties relating to compensation for work performed under the Agreement. This contract supersedes all prior communications or contracts between the parties with respect to professional services to be performed under the Agreement, whether written or oral, but does not replace the terms and conditions of the Agreement as agreed to by the Parties and entered into the court.



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15. RIGHT TO WITHHOLD

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

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable in the event that such contest is not successful.

16. CONDITION PRECEDENT

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

17. TERMINATION

The Government may request termination of the Contractor for good cause in accordance with Section VIII of the Agreement, but any request for termination of a court-appointed expert will be subject to the terms and conditions of the Agreement and subject to any court order.

18. PARTIAL TERMINATION

The Government may request termination of the Contractor for good cause in accordance with Section VIII of the Agreement, but any request for termination of a court-appointed expert will be subject to the terms and conditions of the Agreement and subject to any court order.

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. CONFLICT OF INTEREST

- (a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- (b) Contractor further covenants that it is:

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- (1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
- (2) a territorial officer or employee and, as such, has:
 - (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - (ii) not made, negotiated or influenced this Contract, in its official capacity; and
 - (iii) no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

21. NOTICE

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by email, facsimile, certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT

Lisa M. Alejandro
 Acting Commissioner
 Department of Property and Procurement
 8201 Sub Base, Suite 4
 St. Thomas, VI 00802
 Email: lisa.alejandro@dpp.vi.gov
 Telephone: (340) 774-0828

Wynnie Testamark
 Director
 Bureau of Corrections
 RR 1, Box 9909
 Kingshill, VI 00850
 Email: Wynnie.testamark@boc.vi.gov
 Telephone: (340) 773-6309

CONTRACTOR

Michael K. Gatling
 OTB Innovations, LLC
 9890 Washingtonian Blvd
 Apartment 605
 Gaithersburg, Maryland 20878-5331
 Email: mkgatling@aol.com



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22. LICENSURE

The Contractor covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

23. OTHER PROVISIONS

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

24. DEBARMENT CERTIFICATION

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

25. FALSE CLAIMS

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

26. INSURANCE

Contractor shall maintain the following insurance coverages during the term of this Contract:

- (a) COMMERCIAL GENERAL LIABILITY: Not Applicable.

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(b) **PROFESSIONAL LIABILITY:** Professional liability insurance, in a form acceptable to the Government, which covers the services being performed under this Contract, with policy limits of not less than one million dollars (\$1,000,000.00) per claim.

(c) **WORKERS' COMPENSATION:** Not Applicable.

27. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

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

WITNESSES

GOVERNMENT OF THE VIRGIN ISLANDS

[Signature]

Wynne Testamark
Wynne Testamark, Director
Bureau of Corrections

7/20/23
Date

[Signature]

[Signature]
Lisa M. Alejandro, Commissioner Designee
Department of Property and Procurement

7/20/2023
Date

[Signature]

OTB INNOVATIONS, LLC

Michael K. Gatling
Michael K. Gatling
Owner
(Corporate seal, if Contractor is a corporation)

06/20/23
Date

APPROVED:

[Signature]
Honorable Albert Bryan Jr.
Governor of the U.S. Virgin Islands

Date: *8/15/23*

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY: Tracy Myers, Esq. Date July 25, 2023

PURCHASE ORDER NO.

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