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CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made this 14th day of December, 2020, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Tourism (hereinafter referred to as "Government") and Miles Partnership, LLLP (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor for the development and implementation of a Marketing Campaign for the U.S. Virgin Islands (USVI) to promote the territory and enlighten prospective visitors that the U.S. Virgin Islands is open for business post hurricanes. The described services is outlined in Addendum I (Statement of Work) attached hereto; and

WHEREAS as a result of the 2017 hurricanes, Irma and Maria, the U.S. Virgin Islands (USVI) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which will be administered by the Virgin Islands Housing Finance Authority (VIHFA); and

WHEREAS, the Government solicited the services under RFP No.032-T-2020 (P); and

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

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

1. SERVICES

The Contractor will provide the services described in Addendum I (Statement of Work) attached hereto and made a part hereof.

2. TERM AND EFFECTIVE DATE

This Contract shall be effective upon the date of execution of this Contract by the Governor of the Virgin Islands and shall terminate Three Hundred and Sixty-Five (365) days thereafter. The Government in its sole discretion, shall have the option to extend this Contract for a period of one (1) year subject to the same terms noted herein, by providing the Contractor with thirty (30) days written notice of the Government's election to extend.

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3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in Addendum I (Statement of Work), agrees to pay Contractor a sum not to exceed **Two Million Thirteen Thousand Five Hundred Seventy-five dollars and 00/100 cents (\$2,013,575.00)** in accordance with the provisions set forth in Addendum II (Compensation) and Addendum III (Cost Proposal) 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, for trips which have been authorized by the Government. These costs shall be advanced or reimbursed on the same basis as is applicable to non-contract employees of the Government or as agreed to by an addendum to this Contract, however, said costs and expenses shall not exceed Seventeen thousand, five hundred dollars and 00/100 cents (\$ 17,500.00).

5. RECORDS

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

6. PROFESSIONAL STANDARDS

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

7. CONFIDENTIAL INFORMATION

It is understood and agreed that Contractor, including but not limited to its employees, agents and assign, shall maintain as confidential all information that Government may disclose to Contractor. Contractor shall take all steps to protect and to not disclose this information, unless the information is either:

- i. known to the disclosing party prior to its receipt from the other party without a limitation or obligation of confidentiality under another Contract;
- ii. independently developed by the disclosing party without use of the other party's protected information or data;
- iii. in the public domain at the time of disclosure through no fault of the disclosing party;
- iv. received from a third party with a legal or contractual right to disclose such information or data; or
- v. required to be disclosed as a result of a legal obligation to do so; provided, however, that the disclosing party shall provide 10 days' prior written notice to the other party of its intention to disclose such information.

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8. OWNERSHIP OF MATERIALS

Upon final payment by Government, materials produced under this Contract shall be considered to be owned by Government. In no event shall Contractor be precluded from developing for itself or for others, materials that are competitive with, or similar to, the deliverables. Furthermore, Contractor will continue to be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are acquired or used in the course of providing the Services. Materials independently developed and owned by Contractor or by other authors and third parties, and which may be used in the fulfillment of this Contract, remain the property of their authors or owners. Government shall be given advance written notice of any third party materials which are used in the fulfillment of this Contract. Subsequent use of such materials by Government shall require written permission of the Contractor or other author(s) thereof.

9. 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.

10. 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.

11. ASSIGNMENT

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

12. INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless (including reasonable attorney's fees and court costs) VIHFA, Government, its officers, directors, trustees, employees, representatives and agents from and against any and all claims, actions, suits, charges and judgments whatsoever that arise out of Contractor's performance or nonperformance of the services under this Contract. This Clause shall survive termination or expiration of this Contract.

Contractor further acknowledges and agrees that neither the Territorial nor federal government may enter into an indemnification Contract which creates or authorizes an obligation under any

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appropriation or fund in excess of the amount authorized by the funding authority for this Contract; nor shall any officer or employee involve the government in any contract or obligation for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law. See V.I. CODE ANN. tit. 33 § 3101 (Expenditures or contracts in excess of appropriations); see also 31 U.S.C. § 1341 (federal AntiDeficiency Act).

13. 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. Contractor acknowledges and understands that as an Independent Contractor, neither it nor any of its personnel, agents, or subcontractors shall be treated as an employee of Government for purposes of employment taxes, federal and state income tax withholding, social security taxes, city and county taxes, employee benefit provisions, workers' compensation and state and federal unemployment compensation. Contractor acknowledges and understands that it shall be solely responsible for payment of federal, state and local taxes (including but not limited to gross receipts tax (GRT)) and that Government assumes no responsibility for the payment of taxes on behalf of Contractor or its personnel and that Government will not withhold such taxes on their behalf. In the event that any members of the Contractor's project team are not available to work on the Project for any reason, Contractor reserves the right to substitute alternative staff of equivalent grade in order to ensure timely completion of the Project.

The Parties further acknowledge and agree that VIHFA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance with respect to this Contract.

Contractor shall be solely responsible for payment to all subcontractor tiers retained under this Contract and, provided timely payment is received from Government, agrees to pay all subcontractors under the same invoicing terms applicable to the Parties as set forth in Addendum II and III as follows:

Subcontractor(s) shall be required to invoice Contractor monthly (within five (5) business days of the close of the month) for the work completed through the end of the billing period based on agreed upon hourly rates and fees. After review of the invoice within five (5) business days of submission to Contractor, each approved invoice shall be paid within 10 days of the approval date.

14. TAXES

Contractor is responsible for payment of all applicable federal and local Territorial taxes, including any taxes of any out-of-state employees who are currently assigned to this project and are working within the Territory.

(a) GROSS RECEIPT TAXES: Title 33 V.I.C. Ch.3, §44, as amended¹, requires VIHFA, when making a payment under this Contract, to deduct and withhold from such payments, gross receipts taxes as required by law at 33 VIC Section 43(a) for each payment for Work performed in the Virgin

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Islands. It is agreed between the Parties that for the purposes of complying with Title 33, Ch. 3, Section 44 of the Virgin Islands Code, VIHFA shall withhold and forward to the Virgin Islands Bureau of Internal Revenue ("VIBIR") such amount as required by the law at 33 VIC Section 43(a) or any amendments thereto.

(b) The Contractor agrees that the calculation and payment of gross receipts taxes shall be its sole responsibility. VIHFA shall not be responsible in any way for any miscalculation, or additional assessments by the VIBIR resulting from Work performed under this Contract. In the unlikely event any overpayment or underpayment is made to the VIBIR, the Contractor shall resolve such matter with VIBIR and inform VIHFA of the resolution thereof.

15. AFFIRMATIVE ACTION PLAN

Contractor shall develop and implement an Affirmative Action Plan in compliance with Executive Order 11246 of September 24, 1965, as amended,² CDBG-DR and federal regulations for implementing the project, which is a series of forms and statements showing specific steps taken by Contractor to promote Equal Employment Opportunity and the utilization of area residents and businesses in the implementation of this Contract. The Affirmative Action Plan must be submitted to Government and VIHFA.

16. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract make or present any claim upon or against Government, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under U.S. Virgin Islands law, 14 V.I.C. § 843. Contractor acknowledges that its 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 false, fictitious, or fraudulent claim is a federal offense.

17. 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.

18. SEVERABILITY

If any provision(s) of this Contract shall be held to be invalid, illegal, unenforceable or in conflict with the law of the United States Virgin Islands, it shall be regarded as stricken and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

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19. 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.

20. ENTIRE CONTRACT

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

21. FORCE MAJEURE

The Parties' performance under this Contract shall be excused so long as the force majeure event prevents the performance of any obligation hereunder when such delay is occasioned by events or occurrences beyond their control, including but not limited to, acts of God, war or threat of war, government retaliation against foreign or domestic enemies, terrorism, governmental regulation, civil disorder, adverse governmental actions or conditions, epidemic, pandemic, recognized health threats as determined by the Centers for Disease Control and Prevention (CDC) or local health agency, disaster, fire, strikes either real or threatened curtailment of transportation facilities, or other similar cause beyond the control of the Parties (collectively, "Force Majeure"), making it from an economic, political, personal safety, or policy basis, illegal, inadvisable, or objectively impossible or commercially unreasonable to fulfill the terms of this Contract. This Contract may be terminated, and/or specific nonperformance or under-performance may be excused, without penalty or payment, except for those Services already provided, for any one or more of such reasons by written notice from the other Party.

22. PENALTY

The Contractor shall pay to VIHFA, as a penalty, up to \$250.00 for each calendar day that a deliverable is late until deemed in compliance, subject to a maximum penalty of \$1,000.00 per occurrence. Penalty damages may be assessed at the reasonable discretion of VIHFA. For the purpose of calculating such penalty damages, a grace period of ten (10) days shall be observed and the contracts schedule shall be extended by any additional time or delays outside the control of the Contractor caused by an act of commission, omission or delay of VIHFA. VIHFA may deduct and retain out of the monies, which may become due hereunder the amount of any such liquidated damages, and in case the amount which may become due hereunder shall be less than the amount of the liquidated damages due to VIHFA, the Contractor shall be liable to pay the difference.



23. RIGHT TO WITHHOLD

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

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

24. CONDITION PRECEDENT

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

25. 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.

26. 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.

27. 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.

28. 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.

29. NOTICE

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

GOVERNMENT

Anthony D. Thomas
Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas, VI 00802

Joseph B. Boschulte
Commissioner
Department of Tourism
2318 Kronprindsens Gade
St. Thomas, VI 00802

CONTRACTOR

David Burgess
President
Miles Partnership, LLLP
6751 Professional Pkwy W Ste 200
Sarasota, FL 34240-8450

30. EFFECTIVE DATE

The effective date of this Contract shall be the day of execution of the Contract by the Governor of the United States Virgin Islands.

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31. 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.

32. OTHER PROVISIONS

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

33. 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.

34. 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.

35. 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.

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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. The Government shall be listed thereon as a certificate holder.
- c) **WORKERS' COMPENSATION:** Contractor shall supply current coverage under the Government Insurance Fund or other form of coverage.

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

WITNESSES:


Jay Scallen

CONTRACTOR


David Burgess, President
 Miles Partnership, LLLP

10/26/2020
 Date

(Corporate seal, if Contractor is a corporation)

GOVERNMENT OF THE VIRGIN ISLANDS



Joseph B. Boschulte
Anthony D. Thomas

Joseph B. Boschulte, Commissioner
 Department of Tourism

11/24/2020
 Date

Anthony D. Thomas, Commissioner
 Department of Property and Procurement

11/23/2020
 Date

APPROVED:


Albert Bryan Jr.

Date: 12/14/20

GOVERNOR OF THE VIRGIN ISLANDS

DEPARTMENT OF JUSTICE BY: Carl E. McDaniel Date 12/7/2020

PURCHASE ORDER NO. _____