



## COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 7/20/2021 Meeting Date: 8/5/2021

Name: Lawrence Wilson Department: Communications

Division Manager's Signature:

A handwritten signature in blue ink, appearing to be "Lawrence Wilson", written over a light blue circular stamp.

### 1. Nature and purpose of agenda item:

Approve the 5 year extension of the Consulting Service Agreement (CSA) with Omnicom Consulting Group (OCG) to provide professional communication consulting services. The CSA was originally awarded to OCG and BCC approved May 25, 2017 after successfully winning RFP-2017-O. Approval of extension places this CSA in-line with BCC policy allowing only one (1) 5 year contract extension. Section 5 of the amended CSA states the term limit of this CSA.

### 2. Recommended Motion/Action:

Approval of Consulting Services Agreement with Omnicom Consulting Group.

### 3. Fiscal impact on current budget.

This item has no effect on the current budget.

## **CONSULTING SERVICES AGREEMENT AMENDMENT #2**

**THIS AGREEMENT** is **AMENDMENT #2** to the **AGREEMENT** awarded by the Columbia County BOCC on February 18, 2016 and signed on February 24, 2016, in response to the County Issued RFQ-2015-H, by and between Columbia County (“COUNTY”), a Florida County created and existing under the laws of the State of Florida, and Omnicom Consulting Group, Inc., (“CONSULTANT”), a corporation authorized to do business in Florida, located at 2418 Mill Creek Court Suite 2, Tallahassee, FL 32308, (the COUNTY and CONSULTANT collectively referred to hereinafter as the “PARTIES”).

### **WITNESSETH:**

**WHEREAS**, COUNTY desires consulting services relating to radio communications technology; and

**WHEREAS**, the COUNTY has selected CONSULTANT through a competitive procurement process; and

**WHEREAS**, the COUNTY shall have the ability to request as needed on-demand services from selected CONSULTANT through a Request for Additional Services process; and

**WHEREAS**, COUNTY desires the CONSULTANT perform services as described in the PROPOSAL and pursuant to the terms and conditions of this AGREEMENT; and

**WHEREAS**, the PARTIES desire to enter into this AGREEMENT;

**NOW, THEREFORE**, in consideration of the work to be performed and the payment for the performance of the work, and of the mutual covenants contained herein and the mutual benefits to flow each unto the other, and for other good and valuable consideration, the PARTIES agree as follows:

#### **Section 1. Recitals.**

The recitals contained above are declared by the PARTIES to be true and correct and are incorporated into this AGREEMENT.

#### **Section 2. Consultant’s Obligations.**

CONSULTANT shall perform all work and services described in, and in accordance with, this AGREEMENT. CONSULTANT warrants that all equipment, materials and workmanship furnished whether furnished by CONSULTANT or its sub-suppliers, will comply with the AGREEMENT and any COUNTY specifications, drawings and other descriptions supplied or adopted, and will be new, fit and sufficient for the purpose for which they are intended, of good materials, design and workmanship and free from defects or failure. The COUNTY, or its duly authorized representative, shall at all times have full opportunity to inspect the materials to be furnished and the work to be done under this AGREEMENT. The CONSULTANT shall comply

with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of this AGREEMENT. The CONSULTANT is responsible for and shall indemnify COUNTY against all damage or loss caused by fire, theft or otherwise, to materials, tools, equipment, and consumables left on COUNTY property by the CONSULTANT.

### **Section 3. Payment.**

Prior to commencing work on each task(s) delineated in PROPOSAL, COUNTY will provide CONSULTANT with a written Notice to Proceed noting the expected CONSULTANT fees and schedule of work for the task(s). CONSULTANT agrees to perform all work and services in PROPOSAL and to furnish all necessary labor, materials, equipment, machinery, tools, apparatus, and means of transportation related to such work and services at CONSULTANT'S sole cost and expense as delineated in the fee schedule in PROPOSAL. In exchange, COUNTY agrees to pay CONSULTANT, in accordance with the fee schedule in the PROPOSAL, and COUNTY shall pay CONSULTANT the amount on each such invoice within thirty (30) days of receipt. Any amount not paid within such thirty-day period shall accrue interest at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month, or (ii) the highest rate permitted by law.

### **Section 4. Insurance.**

CONSULTANT shall take out and carry during the entire life of this AGREEMENT: (a) property damage insurance with adequate limits to protect both CONSULTANT and COUNTY from liability, (b) general liability insurance and automobile liability insurance of at least \$1,000,000 per incident, \$2,000,000 aggregate, with COUNTY added as an additional insured, and (c) professional liability insurance at least \$1,000,000 per incident, \$2,000,000 aggregate, and (d) automotive liability insurance at least \$1,000,000 per incident, and (e) excess umbrella liability insurance at least \$2,000,000 per incident, and (f) Worker's Compensation insurance as required by applicable law. Upon request, CONSULTANT will provide COUNTY with certificates of insurance evidencing the aforesaid insurance coverage to be in force and further provide that no coverage will be cancelled or reduced without advance written notice to COUNTY.

### **Section 5. Performance Schedule.**

Prior to commencing work on any task(s) in PROPOSAL, CONSULTANT will provide COUNTY with a performance schedule delineating the start date, completion date, and any important milestone dates related to the task(s). CONSULTANT will complete all work in accordance with the performance schedule.

### **Section 6. Necessary Approvals.**

CONSULTANT shall procure all permits, licenses, and certificates, or any approvals in performance and completion of this AGREEMENT as may be required by federal, state, and local laws, ordinances, rules, and regulations, and in accordance with AGREEMENT.

### **Section 7. No Waiver.**

No waiver, alterations, consent or modification of any of the provisions of this AGREEMENT shall be binding unless in writing and signed by the PARTIES.

**Section 8. Indemnity / Liability.**

CONSULTANT will defend, indemnify, and hold harmless COUNTY and COUNTY's officers, agents, representatives and employees harmless from any and all claims, damages, costs, including attorney's fees, and liabilities of any kind directly resulting from the willful misconduct of CONSULTANT or its employees, representatives, or agents or the negligent performance or breach of CONSULTANT'S obligations under this AGREEMENT; except to the extent such claims, damages, costs and liabilities result directly from the negligence or willful misconduct of COUNTY or its employees, representatives, or agents. In no event shall CONSULTANT be liable for lost profits, special, incidental, consequential, or indirect damages suffered by COUNTY.

**Section 9. Independent Contractor.**

CONSULTANT'S relationship with COUNTY shall at all times be that of an independent contractor. The method and manner in which CONSULTANT'S services hereunder shall be performed shall be determined by CONSULTANT, in its sole discretion, and COUNTY will not exercise control over CONSULTANT or its employees except insofar as may be reasonably necessary to ensure performance and compliance with this AGREEMENT. The employees, methods, equipment and facilities used by CONSULTANT shall at all times be under its exclusive direction and control. Nothing in this AGREEMENT shall be construed to designate CONSULTANT, or any of its employees, as employees or agents of COUNTY.

**Section 10. No Discrimination.**

CONSULTANT shall not discriminate on the basis of race, creed, color, national origin, sex, age, or disability, in the performance of this AGREEMENT.

**Section 11. No Other Agreements.**

The PARTIES agree that the AGREEMENT contains all the terms and conditions agreed upon by the PARTIES. No other AGREEMENTS, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind either party.

**Section 12. Attorney's Fees.**

The prevailing party in any action, claim or proceeding arising out of this AGREEMENT shall be entitled to attorney's fees and costs from the losing party.

**Section 13. Notice.**

Any notice, request or other communication to either party by the other concerning the

terms and conditions of this AGREEMENT shall be in writing and shall be deemed given when actually received by the addressee, having been hand delivered or sent postage prepaid, by certified or registered United States mail, return receipt requested, or an overnight courier service in the United States (including Federal Express), addressed as follows:

If to CONSULTANT:      Omnicom Consulting Group, Inc.  
2418 Mill Creek Court  
Suite 2  
Tallahassee, FL 32308  
Attn: Tim Barrentine  
President

If to COUNTY:      Columbia County Board of County Commissioners  
135 NE Hernando Avenue, Suite 203  
Lake City, Florida 32056  
County Manager

The person and the place to which notices are to be mailed or delivered to either party may be changed from time to time by notice given in accordance with the provisions hereof.

#### **Section 14. Termination.**

COUNTY shall have the right at any time upon fifteen (15) calendar day's written notice to CONSULTANT to terminate the services of CONSULTANT for convenience. The COUNTY shall pay to CONSULTANT and CONSULTANT shall accept as full payment for its services, a sum of money equal to the work completed and any commenced but incomplete services.

Either party may terminate this AGREEMENT if the other party breaches a material term and if that breach is not cured within fifteen (15) days after notice is given of such breach. If the party in default cures the breach within the fifteen (15) day period, but subsequently commits a similar breach at any time after the first breach has been cured, then the noticing party may elect to terminate the AGREEMENT immediately without further notice.

If this AGREEMENT is terminated by either party for any reason, then the COUNTY shall compensate CONSULTANT for work actually performed and expenses incurred up to the date of termination.

#### **Section 15. Contract Term.**

This AGREEMENT shall be in full affect for a term of five (5) years from the date of execution. With the approval of the COUNTY though the Board of County Commissioners and the CONSULTANT, the AGREEMENT may be extended by one additional five (5) year term at the end of the initial term.

#### **Section 16. General.**

**A. Modifications** - This AGREEMENT or any part thereof may not be modified, except by written AGREEMENT of the PARTIES signed by the duly authorized representatives of the PARTIES.

**B. No Waiver** - No omission or delay by either party to this AGREEMENT at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms of this AGREEMENT, shall be a waiver of any such right or remedy to which either party is entitled, nor shall it in any way affect the right of either party to enforce such provisions thereafter.

**C. Applicable Law and Venue** - This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Florida. The venue for litigation pertaining to this AGREEMENT shall be in Columbia County, Florida.

**D. Severability** - If any provisions of this AGREEMENT shall be held to be invalid, illegal or unenforceable, the validity of all other provisions hereof shall in no way be affected thereby.

**E. Court Appearances** – Except for any dispute arising directly from CONSULTANT’S performance under this AGREEMENT, nothing in this AGREEMENT shall obligate CONSULTANT to prepare for or appear in litigation on behalf of COUNTY except in consideration of additional compensation. Absent a written supplemental AGREEMENT as to the amount of such additional compensation, CONSULTANT shall be compensated on a time and materials basis in accordance with CONSULTANT’S hourly rate schedule per PROPOSAL.

**F. Successors and Assigns** – Neither party shall assign or transfer this AGREEMENT or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any request to assign or transfer this AGREEMENT shall be deemed to be granted if the recipient of such a request has not acted upon such request within thirty (30) days of its receipt.

**G. Force Majeure** - In the event that performance by either party of any of its obligations or undertakings under this AGREEMENT shall be interrupted or delayed by any occurrence not occasioned by the conduct of either party hereto, whether such occurrence be an act of God such as lightning, earthquakes, floods or other like causes, the common enemy, the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire or the act or conduct of any person or persons not a party to or under the direction or control of a party hereto, then such performance shall be excused for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

**H. Entire AGREEMENT** - This AGREEMENT constitutes the entire AGREEMENT between the PARTIES and supersedes all previous agreements and understandings relating to the services to be performed under this AGREEMENT.

**I. Counterparts** – This AGREEMENT may be signed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**J. Survival** – The termination of this AGREEMENT for any reason or by either party, with or without cause, shall not terminate those obligations and rights of the PARTIES which by their terms are intended to survive.

**K. Interpretation.** The headings or captions contained in this AGREEMENT are intended only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this AGREEMENT. This AGREEMENT shall not be construed for or against any party by reason of such party having caused this AGREEMENT to be drafted. Unless otherwise stated, all references to “days” shall mean calendar days (not working or business days). “Including” and “include” mean including without limiting the generality of any description preceding such term. “Or” is used in the inclusive sense of “and/or.”

**L. Jury Trial Waiver.** EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OR ENFORCEMENT OF ANY SUCH RIGHTS OR OBLIGATIONS. THIS JURY TRIAL WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

THIS SPACE LEFT INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT to be executed in triplicate and sealed the day and year first above written.

**CONSULTANT**

**COLUMBIA COUNTY, FLORIDA**

Omnicom Consulting Group, Inc.  
(CONSULTANT's Name)

\_\_\_\_\_  
Chairman  
Board of COUNTY Commissioners

By \_\_\_\_\_  
President

\_\_\_\_\_  
COUNTY Clerk,

Tim Barrentine  
(Printed President's Name)

Approved As To Substance:

Attest \_\_\_\_\_

\_\_\_\_\_  
Department Director/Division Head

Date \_\_\_\_\_

Legal in form and valid as drawn:

\_\_\_\_\_  
COUNTY Attorney

Date \_\_\_\_\_