

## SERVICE AGREEMENT

for

### Economic Development Continuing Marketing Services

**THIS AGREEMENT**, made and entered into on this 25 day of June 2020, by and between Duncan McCall, Inc., authorized to do business in the State of Florida, whose business address is 4400 Bayou Boulevard, Suite 11, Pensacola (the "Contractor") and Santa Rosa County, a political subdivision of the State of Florida, (the "County"):

### WITNESSETH:

1. **COMMENCEMENT**. The contract shall be for a one (1) year period, commencing on June 1, 2020 and terminating on May 31, 2021.

The County may, at its discretion and with the consent of the Contractor, renew the Agreement under all of the terms and conditions contained in this Agreement for two (2) additional one (1) year periods. The County shall give the Contractor written notice of the County's intention to renew the Agreement term not less than ten (10) days prior to the end of the Agreement term then in effect.

2. **STATEMENT OF WORK**. The Contractor shall provide Economic Development marketing services for the County in accordance with the terms and conditions of Request for Proposal (RFP) #20-18. This Agreement contains the entire understanding between the parties and any modifications to this Agreement shall be mutually agreed upon in writing by the Parties, in compliance with the County Purchasing Ordinance and Purchasing Procedures in effect at the time such services are authorized.
3. **CONTRACT AMOUNT**. For all advertising expenditure performed on behalf of the Santa Rosa Economic Development Office, up to Thirty-four thousand five hundred dollars (\$34,500) per contract period, the County shall pay the Contractor on a per project basis.

Payment will be made upon receipt of a proper invoice, approval by the Project Manager or designee, and in compliance with Chapter 218, Fla. Stats., otherwise known as the "Local Government Prompt Payment Act."

4. **ADVERTISING, CREATIVE DESIGN AND PRODUCTION**. All charges for advertising, production, photography, on-line, and social media production design, printing, direct mail, audiovisual production services, marketing research and promotional publicity will be estimated on a per project basis and submitted in writing to the County's Project Manager or designee, for approval
  - A. The Contractor shall not incur any obligations or provide any services for the County's account for any marketing programs without first obtaining written approval from the County's designated representatives or any other person or persons duly identified by the County in writing. The County's designated representatives shall be set forth on Exhibit "A" attached

hereto and made an integral part hereof, as the same shall be modified or amended by the County, from time to time, by written instrument delivered to the Contractor.

4.1 **ADVERTISING AND MEDIA.** Charges for advertising placed by the Contractor on behalf of the County will be billed to the County at the actual cost paid by the Contractor and shall not include any markup, for the specified medium or media.

4.2 **PURCHASED TALENT AND OTHER SERVICES.** Charges for expertise, talents and services needed to execute marketing, media or production advertisement placed by the Contractor on behalf of the County will be billed to the County at the actual cost paid by the Contractor and shall not include any markup.

4.3 **PROMOTIONAL ITEMS.** For any promotional giveaways items, the Contractor will endeavor to purchase goods through an established County contract.

5. **SALES TAX.** Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. Santa Rosa County, Florida as a political subdivision of the State of Florida, is exempt from the payment of Florida sales tax to its vendors under Chapter 212, Florida Statutes, Certificate of Exemption # 85-8015966531C-2.
6. **NOTICES.** All notices from the County to the Contractor shall be deemed duly served if mailed or emailed to the Contractor at the following Address:

Duncan McCall Advertising  
4400 Bayou Boulevard, Suite 11  
Pensacola, Florida 32503  
Attention: Bryan McCall, VP  
Telephone: 850-476-5035  
bryan@duncanmccall.com

All Notices from the Contractor to the County shall be deemed duly served if mailed or emailed to the County to:

Santa Rosa County Economic Development Office  
6491 Caroline Street, Suite 4  
Milton, Florida 32570  
Attention: Shannon Ogletree, Executive Director  
Telephone: 850-623-0174  
shannon@santarosa.fl.gov

The Contractor and the County may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

7. **NO PARTNERSHIP.** Nothing herein contained shall create or be construed as creating a partnership.

8. **NO IMPROPER USE.** The Contractor will not use, nor suffer or permit any person to use in any manner whatsoever, County facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor or if the County or its authorized representative shall deem any conduct on the part of the Contractor to be objectionable or improper, the County shall have the right to suspend the contract of the Contractor. Should the Contractor fail to correct any such violation, conduct, or practice to the satisfaction of the County within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension to continue until the violation is cured. The Contractor further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the County.
  
9. **TERMINATION.** Should the Contractor be found to have failed to perform services in a manner satisfactory to the County as per this Agreement, the County may terminate said agreement for cause; further the County may terminate this Agreement for convenience with a thirty (30) day written notice. The County shall be sole judge of non-performance.

In the event that the County terminates this Agreement, Contractor's recovery against the County shall be limited to that portion of the Contract Amount earned through the date of termination. The Contractor shall not be entitled to any other or further recovery against the County, including, but not limited to, any damages or any anticipated profit on portions of the services not performed.

#### **9.1 RIGHTS AND DUTIES UPON TERMINATION OF AGREEMENT.**

- A. Upon the giving or receipt of notice of termination, the Contractor shall not commence any new work, but it shall complete and place all work on marketing programs previously approved by the County. All other rights and duties of the parties shall continue through the effective date of termination, and the County shall be responsible for payment to the Contractor for any contract obligation incurred with third parties during this period.
  
- B. Upon the giving of notice to terminate this Agreement by the County, the Contractor shall remain entitled to receipt of payment for, and County shall pay when due as hereinabove provided, that portion of any annual fee due and payable to the Contractor from the date of the Contractor's receipt of such notice of termination through the actual date of termination.
  
- C. Upon termination by the County prior to expiration of the initial term of this Agreement, any unpaid hourly fees for work completed to that date will be paid in accordance with Exhibit "A". All work completed after the notice of termination and previously approved by County will be paid for as specified.
  
- D. Upon termination of this Agreement, the Contractor shall assign to the County all rights in contracts, agreements, arrangements or other transactions made with third parties for County's account, effective on the date of termination or on such other date as may be agreed upon by the parties; and the County shall assume all obligations and hold the Contractor harmless from all liability thereunder. In the event any such contracts are nonassignable, or consent to assignment is refused, or the Contractor cannot obtain a release from its obligations, the Contractor shall continue performance, and the County

shall meet its obligations including its obligations to pay to the Contractor as though this Agreement had not terminated.

E. Upon termination of this Agreement, pursuant to notice from one party to the other as herein provided, the Contractor shall bill the County for all amounts not previously billed and which remains due the Contractor through the date of termination. The Contractor shall be entitled to payment, and County shall pay, for all costs and services related to the portion of the marketing programs commenced and approved by the County prior to the receipt of such notice and, with the prior express written consent of the County, for all costs and services related to that portion of the marketing program approved by County after receipt of such notice through the actual date of termination.

10. **NO DISCRIMINATION.** The Contractor agrees that there shall be no discrimination as to race, sex, color, creed or national origin.

11. **INSURANCE.** The Contractor shall provide insurance as follows:

A. **Commercial General Liability:** Coverage shall have minimum limits of \$1,000,000 Per Occurrence, \$2,000,000 aggregate for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.

B. **Business Auto Liability:** Coverage shall have minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership.

C. **Workers' Compensation:** Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws.

The coverage must include Employers' Liability with a minimum limit of \$500,000 for each accident.

D. **Professional Liability:** Shall be maintained by the Contractor to ensure its legal liability for claims arising out of the performance of professional services under this Agreement. Contractor waives its right of recovery against County as to any claims under this insurance. Such insurance shall have limits of not less than \$1,000,000 each claim and in the aggregate.

Contractor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet.

12. **INDEMNIFICATION.** To the maximum extent permitted by Florida law, the Contractor shall indemnify and hold harmless Santa Rosa County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by Contractor, any statutory or regulatory violations, or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. This indemnification obligation shall not be

construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph.

This section does not pertain to any incident arising from the sole negligence of Santa Rosa County.

13.1 The duty to defend under this Article 13 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Article 13 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

13. **CONTRACT ADMINISTRATION.** This Agreement shall be administered on behalf of the County by the Economic Development Office.
14. **SUBJECT TO APPROPRIATION.** It is further understood and agreed by and between the parties herein that this agreement is subject to appropriation by the Board of County Commissioners.
15. **PROHIBITION OF GIFTS TO COUNTY EMPLOYEES.** No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any County employee. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with County staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the County for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any contract held by the individual and/or firm for cause.
16. **COMPLIANCE WITH LAWS.** By executing and entering into this agreement, the Contractor is formally acknowledging without exception or stipulation that it agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to this Agreement, including but not limited to those dealing with the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended; taxation, workers' compensation, equal employment and safety (including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes), and the Florida Public Records Law Chapter 119 (including specifically those contractual requirements at F.S. § 119.0701(2)(a)-(d) and (3)). If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify the County in writing. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this agreement and the County shall have the discretion to unilaterally terminate this agreement immediately.
17. **AGREEMENT TERMS.** If any portion of this Agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the remaining portion of this Agreement shall remain in effect.

18. **ADDITIONAL ITEMS/SERVICES.** Additional items and/or services may be added to this contract in compliance with the Purchasing Ordinance and Purchasing Procedures.
19. **DISPUTE RESOLUTION.** Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached during negotiations to County for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached at mediation to County's board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under section 44.102, Fla. Stat.
20. **VENUE.** Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Santa Rosa County, Florida, which courts have sole and exclusive jurisdiction on all such matters.
21. **ORDER OF PRECEDENCE.** In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Request for Proposal (RFP) and/or the Contractor's Proposal, the Contract Documents shall take precedence; thereafter, the Request for Proposal.
22. **ASSIGNMENT.** Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of the County. Any attempt to assign or otherwise transfer this Agreement, or any part herein, without the County's consent, shall be void. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward the County.
23. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS (850)983-1925, [wandap@santarosa.fl.gov](mailto:wandap@santarosa.fl.gov); 6495 Caroline Street, Suite C, Milton, Florida 32570.**
  - (A) The Contractor shall comply with public records laws, specifically to:
    1. Keep and maintain public records required by the public agency to perform the service.
    2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**(B) Request for records; noncompliance.**

1. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

2. If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

3. A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

24. **AVAILABILITY OF RECORDS.** The Contractor shall maintain all records, books documents, papers and financial information pertaining to all Work performed under this agreement. The Contractor agrees that the County, or any duly authorized agents, shall, free of charge, have the right to audit, inspect and copy all such records, documentation as often as they deem necessary during the period of this Agreement and until the expiration of (5) year period after final payment under this Agreement.

25. **OWNERSHIP OF DOCUMENTS.** County shall be the owner of all documents and materials produced pursuant to this Agreement and Duncan McCall, Inc. shall not receive any additional compensation for their use or reproduction by the County. The County shall be the owner of and be in possession of all intellectual property created or furnished pursuant to this Agreement, including, but not limited to drawings, layouts, photography, film, video and printed documents, unless specifically exempted by the County.

**IN WITNESS WHEREOF**, the parties hereto, have each, respectively, by an authorized person or agent, have executed this Agreement on the date and year first written above.



**BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY, FLORIDA**

**ATTEST:**

By: *Donald C. Spencer*  
Donald C. Spencer, Clerk of Court

By: *Don Salter*  
W.D. "Don" Salter, Chairman

Dated: \_\_\_\_\_

*Bocc approved May 14, 2020*

**Duncan McCall, Inc.**  
**Contractor**

*[Signature]*  
Witness

By: *[Signature]*  
Signature

*NILES ANDERSEN*  
Print witness name

*Bryan McCall / VICE PRESIDENT*  
Print name and title

Approved as to Form and Legality:

*[Signature]*  
Santa Rosa County Attorney

*Roy V. Andrews*  
Print name