



Lumpkin County, Georgia

Finance Department

Date: May 20, 2016

Agenda Item: Website consulting contract service/contract enhancement

Item Description: Proposal by Mobile Mind for enhanced services

Facts & Historical Information:

Lumpkin County contracted with a local company to build a new website and planning permit software program in 2008. The county paid a small fee for the construction of the site and agreed to a monthly maintenance fee of \$1,000 for services listed in the attached contract. The County utilized that website until 2014. In 2014, the County let documents asking for interested parties to submit bids for a new website. No bids were returned for consideration. The County negotiated with the existing contractor to build a new website and the contractor agreed to do that for a small fee. The monthly maintenance fee remained the same. The contractor has approached the county about a need for enhanced services (please see below list) and another option to handle some ADA items related to the site and existing documents. The contractor is asking for the monthly maintenance fee to increase commensurate with the enhanced services and additional duties that are required by security and use of the site. The amount of the increase is \$1,000 to a total of \$2,000 a month. Below is a list of items that were given to staff by the contractor:

1. IMPORTANT: Move permit site to ACNS internal server, Mobile Mind work more closely with ACNS on security
2. Enhanced monthly reporting including security
3. Server software monitoring and updates for both sites
4. Direct availability, reduce interruptions to county staff, saved time used for reports
5. Social media enhancements (FB photo feed, Twitter)
6. New Visual Composer elements intro and training
7. New department page creativity ideas
8. Increase Mobile-readiness with new responsive site features
9. Security package and subscription purchases
10. Increased security measures as needed (from password changes all the way to two-factor authentication)

Should the Board choose to enter into an agreement for this contractor to handle ADA noncompliant documents on the website, it would cost an additional \$1,000 a month.



Lumpkin County, Georgia

Finance Department

Potential Courses Of Action:

1. The Board could choose to approve an increase in the monthly base maintenance fee by \$1,000 a month for the new enhanced services the contractor will provide.
2. The Board could approve the enhanced services and ADA portion of the proposal and increase the monthly fees by \$2,000 a month. Staff doesn't feel that the County should choose this option at this time as the final website ADA survey report hasn't been completed by MTC so we are not sure at this time how much work has to be completed on documents that are housed on our website.
3. The Board could choose to not agree to the upgraded enhancement proposal and put this service out for bid. The County may or may not get any responses to the bid. The contractor could choose to not bid and walk away leaving the County with no website administrator. The County could get a cheaper bid or a more expensive bid for this same service. This is an option but the Board should understand that no one on staff is a web developer so we have to have someone that can maintain the site or we would have to keep the site as is with no updates in the future. In the changing world of technology, our site would soon be outdated and unsecure.

Budget Impact:

The amount of the increase requested is not included in the 2016 budget. If approved, the amount could be included in the 2017 budget as that budget is still being developed.

STATEMENT OF WORK

Redesign Current Web Site

- Site analysis and design, site mockups and development, transfer of current site data, meeting with county personnel and delivery of live Web site with search engine optimized content.

Delivery time: 4 to 6 weeks from start date

Fees: \$3000.00 (three thousand dollars)

Invoicing: Within 15 days of date of delivery

Replace Missing Web Site Content and Design New Content

- Missing sections include Current Projects and an Event Calendar. A photo gallery is suggested as new content. This content can be added as the County's budget allows.

Delivery time: 3 to 4 weeks from start date

Fees: \$2000.00 (two thousand dollars)

Invoicing: Within 15 days of date of delivery

Web Site Maintenance Services

- Recurring monthly maintenance services include the following:

- Site hosting and server/db maintenance
- Basic search engine optimization (SEO)
- Maintain recurring info on Current Info, Event Calendar, Dept and Contact Info, Newsletter, Photo Gallery, Links and Jobs pages or implement Content Management System (CMS) and maintain for contracted period
- Maintain and update all non-dynamic pages as needed

The monthly maintenance fee can be treated as twenty (20) guaranteed hours of work per month billed at \$50.00 (fifty dollars) per hour. Any hours not applied toward the above listed maintenance services in a given month can be applied toward new site content design and development in the same month.

Delivery time: Monthly

Fees: \$1000.00 (one thousand dollars) per month

Invoicing: Within 15 days of last day of previous month of services

Additional Services - Any services required in addition to the above will be performed at additional cost and billed separately.

Delivery time: As required

Fees: Minimum \$50.00 (fifty dollars) per hour

Invoicing: Within 15 days of last day of previous month of services

PROFESSIONAL SERVICES AGREEMENT
WEB SITE DESIGN, IMPLEMENTATION AND MANAGEMENT

STATE OF GEORGIA
LUMPKIN COUNTY

THIS AGREEMENT (the "Agreement") is hereby entered into effective November 1, 2008, between Lumpkin County, a political entity of the State of Georgia, with offices at 99 Courthouse Hill, Suite A, Dahlonega, GA 30533-0541, (the "Customer") and Applied Studios LLC, a limited liability company with offices at 100 Springwood Way, Dahlonega, GA 30533-4825 (the "Contractor"), (each a "Party" and collectively the "Parties") on the following terms and conditions:

1. **Purpose of Engagement.** Customer is hiring Contractor to perform certain Web site design, development and maintenance services (the "Services") and to deliver web site design documents, content and features ("Work Product") specified in the attached Statement of Work (S.O.W.).
2. **Term of Engagement.** This Agreement shall commence on the Effective Date as set out above and, unless terminated earlier in accordance with Section 13 ("Termination"), shall continue in full force and effect for a period of one (1) year (the "Term"). The Term will automatically renew for a like period unless either Party terminates at least ten (10) days prior to the expiration of the then current Term. Termination, other than for Contractor's uncured material breach, shall have no effect on Customer's obligation to pay an equitable portion of any Fixed Price for Services that are rendered prior to the effective date of termination.
3. **Scope of Engagement.** Contractor is being hired on a Fixed Price basis during the Term to complete the Work Product as specified in the S.O.W. (the "Specifications"). Any changes to the scope of work shall be subject to a written Change Order that includes an appropriate adjustment to the price, delivery dates or a notation that no such adjustments are necessary. If the Parties cannot agree on the characterization of an item as "out-of-scope," Contractor shall fill the request without prejudice to its claim for reasonable compensation. Unless otherwise stated, all work schedules shall be considered reasonably accurate estimates, subject to revision.
4. **Price & Payment.**
 - (a) **Price.** The Services and Work Product described in the S.O.W. are provided at the firm fixed price set forth in the S.O.W. Except as stated in Subsection (d) below, the price includes Contractor's wages, overhead, general and administrative expenses and all other indirect costs and profit to be recovered or charged under this Agreement. Contractor shall pay its personnel at least the minimum wage applicable to each labor classification.
 - (b) **Invoices.** Charges for all Services shall be invoiced according to the payment schedule set forth in the S.O.W. or, if not specified, then invoices shall be submitted monthly in

equal amounts based on the duration of the estimated project schedule; provided that ten (10) percent of each payment may be withheld until final Customer acceptance.

(c) **Payment.** Payment shall be made within thirty (30) days after date of invoice. Customer may not withhold or setoff any amounts due hereunder and Contractor reserves the right to cease work without prejudice if amounts are not paid when due. Any disagreement concerning payment shall be subject to mediation which may be ordered by any Lumpkin County court of competent jurisdiction. Any costs of litigation shall be awarded to the prevailing party (for time after any effort at mediation has been deemed unsuccessful) based on an hourly rate for attorney time of \$100.00 per hour and not to exceed thirty per cent (30%) of the net award to the prevailing party, as may be awarded by the Court. Such sum shall be in the nature of a judgment and shall bear interest at the judgment rate.

(d) **Travel Costs & Taxes.** There is no identified need for reimbursement for travel costs or taxes (other than Georgia sales tax) within the S.O.W. (Scope of Work). If any such need is identified, Contractor shall give notice to Customer which shall have ten (10) days after receiving such notice to accept or reject the change.

5. **Testing & Acceptance.** The Parties shall mutually agree on reasonable testing procedures to determine whether the particular Work Product substantially complies with the applicable Specifications. Work Product shall be deemed accepted (that is, fees for work done will be due) if not rejected within thirty (30) days or if Customer makes beneficial use of them.

6. **Proprietary Rights.** The following provisions govern the ownership and use of Work Product:

(a) **Work Product Defined.** "Work Product" means all intangible and tangible embodiments of work produced by Contractor in performing the Services, including all deliverables provided to Customer under the S.O.W. or this Agreement.

(b) **Ownership.** Subject to final payment: (i) Customer (or its designee) shall own all right, title and interest in the Work Product to include derivative work and work products, and (ii) Contractor expressly acknowledges and agrees that the Work Product constitutes "work made for hire" under U.S. copyright laws (17 U.S.C. Sec. 101), to be owned exclusively by Customer and, alternatively, assigns to Customer all ownership rights and irrevocably waives all other rights (including moral rights) it has in the Work Product. Contractor shall execute any reasonable document required to vest such exclusive ownership in Customer upon final payment.

(c) **License to Contractor.** Contractor is granted a royalty-free non-exclusive license to reproduce, modify and use (collectively, "Use") the Work Product in performing Services under this Agreement and to Use and sublicense copies of the Work Product in support of projects for other clients undertaken by Contractor that are not competitive with the Customer's use of the Work Product.

7. **Confidential Information.**

(a) **Acknowledgment of Confidentiality.** Each Party hereby acknowledges that it may be exposed to confidential and proprietary information belonging to the other Party or relating to its affairs, including, without limitation, source code and design materials for Work Product and other materials expressly designated or marked as confidential. Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the Party, or (iii) information received by a Party from a third party who was free to disclose it.

(b) **Covenant Not to Disclose.** Each Party hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose the other Party's Confidential Information to any person or entity, except to its own employees having a "need to know," and to such other recipients as the other Party may approve in this Agreement or in a signed writing. Each Party shall use at least the same degree of care in safeguarding the other Party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a Party use less than due diligence and care. Neither Party shall alter or remove from any software, documentation or other Confidential Information of the other Party (or any third party) any proprietary, copyright, trademark or trade secret legend.

8. **Non-circumvention.** Customer acknowledges that Contractor has expended considerable time, effort and resources to attract and retain talent and expertise of personnel who may perform Services under this Agreement. During the Term and for a period of one (1) year thereafter, Customer agrees not to hire, solicit, nor attempt to solicit the services of any Contractor employee or subcontractor personnel assigned to this project without the prior written consent of Contractor. Placing advertisements of general circulation shall not itself be deemed a violation of the nonsolicitation provision.

9. **Injunctive Relief.** The Parties acknowledge that violation by one Party of the provisions of Section 6 ("Proprietary Rights"), Section 7 ("Confidential Information") or Section 8 ("Non-circumvention") would cause irreparable harm to the other Party not adequately compensable by monetary damages. In addition to other relief, it is agreed that preliminary and permanent injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions. In any action to enforce the foregoing provisions in which it substantially prevails, the aggrieved Party shall be entitled to recover its costs of enforcement, including reasonable legal fees.

10. **Warranties.**

(a) **Non-infringement Warranty.** Contractor represents and warrants to the best of its knowledge and belief that the Work Product, when properly used as contemplated herein, will not infringe or misappropriate any copyright, trademark, patent, or the trade secrets of any third persons valid in the Local Jurisdiction specified below. Upon being notified of such a claim, Contractor shall:

- (i) defend through litigation or obtain through negotiation the right of Customer to continue using the Work Product;

- (ii) rework the Work Product so as to make it non-infringing while preserving the original functionality, or
- (iii) replace the Work Product with functionally equivalent materials. If none of the foregoing alternatives provide an adequate remedy, Customer may as its sole remedy terminate all or any part of this Agreement and recover amounts paid hereunder with respect to the infringing Work Product.

(b) Limited Performance Warranty. Contractor represents and warrants for a period of one (1) year from the date of delivery ("Warranty Period") that it will make its best effort to ensure the Work Product conforms substantially to the Specifications. Warranty service shall be provided on computer program Work Product, subject to

- (i) the Work Product being installed, implemented and operated in accordance with all instructions supplied by Contractor;
- (ii) Customer notifying Contractor of any such defect promptly after the appearance thereof;
- (iii) Customer properly installing all updates made available with respect to the Work Product, and updates recommended by Contractor with respect to any third party software products (including operating system software) that materially affect the performance of the Work Product;
- (iv) Customer properly maintaining all associated equipment, software and environmental conditions in accordance with applicable Specifications and industry standards;
- (v) Customer not introducing other equipment or software creating an adverse impact on the Work Product;
- (vi) Customer having paid all amounts due hereunder and not being in default of any provision of this Agreement;
- (vii) any design specification provided by Customer being an accurate and complete rendering of the relevant features, applicable interfaces and associated operating environment, and
- (viii) Customer not making any changes (nor permitting any changes to be made by others) to the Work Product source code.
- (ix) The above notwithstanding, Contractor recognizes that this is a work in development and problems will be identified in use which could not be predicted. Contractor anticipates modifications and improvements as may be identified during the design, implementation, concept trial and approval phases, which shall encompass the one year following delivery and installation of any system or subsystem to Customer under this Agreement; the intent of this provision is to improve and repair any problems not discovered until fielding the system and after feedback from citizens using the Web site. It is not intended to include major changes or additions outside the original Statement of Work.

**ANY UNAUTHORIZED CHANGES TO WORK PRODUCT SOURCE CODE
WILL VOID THE WARRANTY PROVIDED UNDER THIS SECTION.**

(c) **Year 2000 Standards.** Contractor represents and warrants during the Warranty Period that it will make its best effort to ensure that any computer program Work Product records, stores, recognizes, interprets, processes and presents both 20th and 21st century dates using four digit years substantially according to formats and assumptions specified in the Specifications. This warranty does not apply insofar as the Work Product derives date functions from other programs (e.g., operating system run-time libraries, databases or firmware) nor does it require Contractor to workaround or accommodate other programs that are not compliant with Year 2000 Standards.

(d) **No Undocumented Features.** Contractor represents and warrants that

- (i) no computer program Work Product will contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits its ability to operate, and
- (ii) it will scan the Work Product with commercially available anti-virus software and shall use due diligence to remove viruses capable of being detected with such software. All corrections shall be as fully warranted as the original work through expiration of the original Warranty Period.

(e) **Warranty Disclaimer.** Except as otherwise specifically provided in this Agreement, the contractor hereby disclaims with respect to all services, work product or other deliverables provided hereunder, all express and implied warranties, including any implied warranties of merchantability, title, accuracy, integration or fitness for a particular purpose.

11. Limitation of Remedies & Liabilities. The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk:

(a) **Remedies.** Except for certain injunctive relief authorized under Section 9 ("Injunctive Relief"), Customer's sole and exclusive remedies for Contractor's default hereunder shall be

(i) to obtain the repair, replacement or correction of the defective Services or Work Product to the extent warranted under Section 10 ("Warranties") or, if Contractor reasonably determines that such remedy is not economically or technically feasible,

(ii) to obtain an equitable partial or full refund of amounts paid with respect to the defective Services or Work Product.

(b) **Liabilities.** Contractor shall not be liable for any amount exceeding the total portion of the contract price actually paid by customer for the work product at issue. In no event shall either party be liable, whether in contract, tort (including negligence) or otherwise, for any indirect, incidental, special or consequential damages (including lost savings, profit or business interruption even if notified in advance of such possibility) arising out of or pertaining to the subject matter of this agreement. These limitations of liability are independent of and apply regardless of whether any exclusive remedies fail of their essential purpose.

12. **Notices.** Notices sent to either Party shall be effective when delivered in person or transmitted by fax machine, one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the address on the first page hereof or such other address as a Party may give notice. A facsimile of this Agreement and notices generated in good form by a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question.

13. **Termination.** This Agreement shall terminate upon expiration of the Term described in Section 2 ("Term of Engagement"). In addition to other relief, either Party may terminate this Agreement if the other Party breaches any material provision hereof and fails after receipt of notice of default to correct such default promptly or to commence corrective action reasonably acceptable to the aggrieved Party and proceed with due diligence to completion. Either Party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in Bankruptcy is filed with respect to the Party and is not dismissed within thirty (30) days. Termination shall have no effect on the Parties' rights or obligations under Section 7 ("Confidential Information"), Section 8 ("Non-circumvention"), Section 9 ("Injunctive Relief") or Section 10 ("Warranties").

14. **Disputes & Choice of Law.** This agreement shall be governed by and construed in accordance with the substantive laws of the United States ("national law") and THE State of Georgia ("local jurisdiction"), without regard to conflicts of law principles. The parties will initiate any dispute resolution proceeding in a Lumpkin County, Georgia, court of competent jurisdiction and irrevocably consent to exclusive personal jurisdiction and venue therein, waiving any rights to be heard in any other venue or jurisdiction.

15. **Independent Contractor Status.** Each Party and its people are independent contractors in relation to the other Party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the Parties. Each Party shall remain responsible, and shall indemnify and hold harmless the other Party, for the withholding and payment of all federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements now existing or hereafter enacted and attributable to themselves and their respective people.

16. **Security, No Conflicts.** Each Party agrees to inform the other of any information made available to the other Party that is classified or restricted data, agrees to comply with the security requirements imposed by any state or local government, or by the federal government, and shall return all such material upon request. Each Party warrants that its participation in this Agreement does not conflict with any contractual or other obligation of the Party or create any conflict of interest and shall promptly notify the other Party if any such conflict arises during the Term.

17. **Insurance, Indemnity.** Each Party shall maintain adequate insurance protection covering its respective activities hereunder, including coverage for statutory worker's compensation, comprehensive general liability for death, bodily injury and tangible property damage, as well as adequate coverage for vehicles. Each Party shall indemnify and hold the other harmless from liability for bodily injury, death and tangible property damage resulting from the acts or omissions of its officers, agents, employees or representatives acting within the scope of their work. Contractor shall furnish to Customer a copy of the declaration page of its worker's compensation insurance policy prior to the effective date.

18. **Compliance with Export Regulations.** Each Party has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals necessary for it to perform its obligations under this Agreement. Neither Party shall directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the governmental administrator of export laws (e.g., the Bureau of Export Administration of the U.S. Department of Commerce or equivalent national agency). Neither Party shall take any action, nor omit to take any required action, which would cause either Party to violate any domestic or foreign law regulating the subject matter of this Agreement. This provision and the assurances made herein shall survive termination of this Agreement.

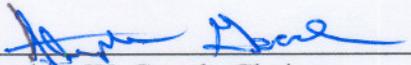
19. **No Assignment.** Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred or assigned by either Party without the other Party's prior written consent and any attempt to the contrary shall be void. Contractor may subcontract discrete portions of the Services, provided Contractor remains responsible to the same extent as if it performed the work itself and obtains in writing all necessary rights and assurances from the subcontractor that may be required by this Agreement.

20. **Miscellaneous.** This document and the S.O.W. referenced herein constitute the entire and exclusive agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be modified or amended only by a writing signed by the Party against whom enforcement is sought. Neither Party shall be liable for delays caused by minor events beyond its reasonable control, provided it uses due diligence to report and work around the reported problem. Any delay caused by Contractor for a period greater than sixty (60) days shall be presumed to be a major event and shall be the basis for termination under Section 13 ("Termination"). Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions. Headings are for reference purposes only and have no substantive effect.

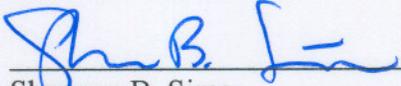
Effective Date: The Effective Date of this Agreement is November 1, 2008, provided it is signed by Customer and returned to Contractor on or before close of business on October 24, 2008.

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the Parties hereto have executed or caused this Agreement to be executed by their duly authorized representatives.

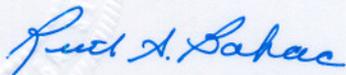
Lumpkin County

By: 
Stephen W. Gooch, Chairman
Lumpkin County
Board of Commissioners

Applied Studios LLC

By: 
Shannon B. Sims
Director of IT Development

County Seal

Attest: 
Ruth Bohac, County Clerk