

PROFESSIONAL SERVICE AGREEMENT
BETWEEN
THE COUNTY OF ALBANY
AND
BRAWN MEDIA
FOR INTEGRATED COMMUNICATIONS PLAN
AT THE SHAKER PLACE REHABILITATION AND NURSING CENTER

RESOLUTION NO. 414 of 2021 (passed November 8, 2021)

This Agreement is made by and between the County of Albany, a municipal corporation acting by and through its County Executive (on behalf of the Albany County Nursing Home), with its principal place of business at 112 State Street, Albany, New York 12207 (hereinafter called the "County"), and Brawn Media, a corporation with its principal place of business located at 441 New Karner Road, Albany, New York 12205 (hereinafter called the "Consultant," and together with the County, may be referred to individually as a "[P]arty" and collectively as the "[P]arties").

WITNESSETH:

WHEREAS, the County has a need for an integrated communications plan at the Shaker Place Rehabilitation and Nursing Center (hereinafter called "Shaker Place"), said request having been denominated RFP #2021—108, and having been issued by the Albany County Purchasing Division (hereinafter called the "Purchasing Division") on July 15, 2021 and published on July 22, 2021 (hereinafter called the "RFP"); and

WHEREAS, in response thereto, the Consultant has submitted a proposal on August 6, 2021 (hereinafter called the "Proposal"); and

WHEREAS, the County has accepted the Proposal of the Consultant to provide the aforesaid services as the lowest responsible bidder; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into an Agreement with the Contractor to provide the services requested by the Proposal through **Resolution No. 414 of 2021**, on November 8, 2021; and

WHEREAS, in furtherance thereof, the parties hereto desire to formalize their understanding and agreement regarding the provision of the aforementioned supplies, and to execute a fully-integrated agreement with respect thereto;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

- 1.1 The Contract Documents consist of the following: this Agreement; the RFP, which is incorporated herein and made a part hereof in its entirety by reference; and the Proposal, which is incorporated herein and made a part hereof in its entirety by reference (collectively called "the Agreement" hereinafter).
- 1.2 In the event of any discrepancy, disagreement, or ambiguity among the documents which comprise this Agreement, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement, or ambiguity: 1) this Agreement; 2) the RFP; 3) the Proposal.

ARTICLE 2. SCOPE OF SERVICES

The Consultant shall provide Shaker Place with an integrated communications plan, which includes, but is not limited to, a comprehensive program of branding/rebranding of the Shaker Place logo, website and social and clinical experiences, and promoting its recognition as an organization set apart from the other facilities in the area. The Services the Consultant shall provide include those describe in the RFP at SECTION 4: SCOPE OF SERVICES, pages RFP3 and RFP4.

ARTICLE 3. COMPENSATION

In consideration of the terms and obligations contained in this Agreement, the County agrees to pay, and the Consultant agrees to accept, an amount not to exceed TWO HUNDRED THOUSAND, THREE HUNDRED AND THIRTY AND 00/100 (\$200,330.00) DOLLARS (US CURRENCY) for all services performed under this Agreement.

ARTICLE 4. PAYMENT

Payment shall be made to the Consultant by the County upon the Contractor's submission of a properly executed Albany County Claim Form, plus all supporting documentation, to the Shaker Place Rehabilitation and Nursing Center, and acceptance by the County of the Claim Form.

ARTICLE 5. TERM OF THE AGREEMENT

This Agreement shall commence on January 1, 2022 and continue in effect until December 31, 2023.

ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

6.1 This Agreement may be terminated by the County or the Contractor as follows:

6.1.1 The County may terminate this Agreement if the Consultant refuses or fails to supply enough properly skilled workers or proper materials to meet any of its requirements, if the Consultant fails to make payment to County-approved subcontractors for materials or labor, or disregards laws, ordinances, or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Consultant is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Consultant in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the County may determine.

6.1.2 The Consultant may terminate this Agreement if the County is substantially in breach of it.

6.2 In the event of a breach by the Consultant, the Consultant shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute Consultant to satisfactorily complete the work, together with the County's own costs incurred in procuring a substitute Consultant.

ARTICLE 7. PROHIBITION OF CONTRACT ASSIGNMENT

7.1 Pursuant to §109 of the General Municipal Law, the Consultant is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this Agreement, or of its right, title, or interest therein, to any other person or entity without the prior written consent of the County.

7.2 The Consultant shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

ARTICLE 8. AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Consultant shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE 9. COOPERATION

Consultant shall cooperate with the agents, representatives, and employees of the County and the County shall cooperate with the agents, representatives, and employees of the Consultant to ensure that the work delineated herein proceeds and concludes as expeditiously as possible.

ARTICLE 10. PREVAILING WAGE

The Consultant shall at all times remain in compliance with Sections 220.3 and 220-d of the N.Y. Labor Law, which concern the payment of not less than the prevailing hourly wage rate for a legal day's work to each laborer, workman, or mechanic employed by the Consultant in the provision of the services required under this Agreement. The Consultant shall submit payroll records to the County every thirty (30) days after issuance of its first payroll in accord with N.Y. Labor Law Section 220 [3-a]a.

ARTICLE 11. NON-DISCRIMINATION

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Consultant agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

ARTICLE 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

Consultant hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that Consultant either (a) has no business operations in Northern Ireland; or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under §4 of the said Local Law No. 3 for 1993 including, but not limited to, imposing sanctions, enforcing compliance, recovering damages, declaring the Consultant in default, and/or seeking debarment or suspension of the Consultant.

ARTICLE 13. IRANIAN ENERGY SECTOR DIVESTMENT

Consultant hereby represents that Consultant is in compliance with New York State General Municipal Law Section 103-g entitled "Iranian Energy Sector Divestment," in that Contractor has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five (45) days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

ARTICLE 14. RELATIONSHIP OF THE PARTIES

Consultant is, and will function as, an independent Consultant under the terms of this Agreement, and shall not be considered an agent or employee of the County for any purpose. The agents, representatives, and employees of the Consultant shall not in any manner be, or be held out to be, the agents, representatives, or employees of the County.

ARTICLE 15. INDEMNIFICATION

Consultant shall defend, indemnify, and save harmless the County, its agents, representatives, and employees, from and against any and all claims, damages, losses and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in consequence of any negligent or intentional act or omission of the Consultant, its agents, representatives, or employees, to the extent of its or their responsibility for such claims, damages, losses, or expenses. Consultant shall bear no responsibility for the negligence of the County or its employees, agents, and assignees.

ARTICLE 16. INSURANCE COVERAGE

- 16.1 Consultant shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the County as an additional insured. Such policies may only be changed upon thirty (30) days prior written approval by the County.
- 16.2 Consultant shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have

been met. The Consultant shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate(s). No work shall be commenced under this Agreement until the Consultant has delivered the Certificates of Insurance to the County. Upon failure of the Consultant to furnish, deliver, and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued, or terminated.

- 16.3 As required by Section 108 of the N.Y. General Municipal Law, this Agreement shall be of no force and effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. Workers' Compensation Law. The Consultant shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. Workers' Compensation Law and of Schedule A of this Agreement.

ARTICLE 17. NON-COLLUSIVE BIDDING

By execution of this Agreement, Consultant warrants, under penalty of perjury, that to the best of knowledge and belief; the prices communicated to the County in establishing the costs of goods and services covered in this Agreement have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition. Consultant warrants that it is in compliance with NYS General Municipal Law Sec. 103-d with regard to the prices of goods and services covered in this Agreement.

ARTICLE 18. NO WAIVER OF PERFORMANCE

Failure of the County to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Consultant.

ARTICLE 19. ACCOUNTING RECORDS

- 19.1 Consultant shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County upon request.

- 19.2 Consultant shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software, or any other information relevant to performance under this Agreement, immediately upon request.
- 19.3 Consultant shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County and authorized State and/or Federal personnel during such period.

ARTICLE 20. NON-APPROPRIATIONS

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

ARTICLE 21. NON-INTERRUPTION OF WORK

The Consultant agrees that it will not intentionally engage in any course of conduct or activity, or employ for the purposes of performing the public work, any subcontractors, employees, labor, or materials which will or may result in the interruption of the performance of the public work due to labor strife or unrest by workmen employed by the Consultant or by any of the trades working in or about the public works and/or premises where the work is being performed.

ARTICLE 22. EXTRA WORK

If the Consultant is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, the Consultant shall promptly notify the County of that opinion. The County shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and whether or not it constitutes extra work. In the event the County determines such work does constitute extra work, it shall provide extra compensation to the Consultant on a negotiated basis.

ARTICLE 23. CHANGE IN LEGAL STATUS OR DISSOLUTION

During the term of this Agreement, the Contractor agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Contractor shall give the County thirty (30) days written notice in advance of such event.

ARTICLE 24. LICENSES

The Consultant shall at all times obtain and maintain all licenses required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

ARTICLE 25. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs.

ARTICLE 26. HEADINGS – CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of the Agreement or in any way to modify, amend, or affect the provisions hereof.

ARTICLE 27. NOTICES

All notices, consents, waivers, directions, requests, or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

ARTICLE 28. STORMWATER MANAGEMENT PROGRAM

The Consultant specifically agrees to comply with the terms and conditions of the County's stormwater management program (SWMP) as set forth in Albany County Local Law No.7 for 2007 and further agrees to implement any corrective actions identified by the County or a representative. The Consultant understands that the County must comply with the conditions of the New York State Pollutant Discharge Elimination System (SPDES) general permit (GP-0-10-002) for stormwater discharges from the Municipal Separate Storm Sewer Systems (MS4s) and that it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards. The Consultant further understands that any non-compliance will not diminish, eliminate or lessen the Consultant own liability. The Consultant shall execute and deliver to the Count a certification statement prior to commencing any work.

ARTICLE 29. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

ARTICLE 30. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and no representations or promises have been made except as expressly set forth herein.

ARTICLE 31. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

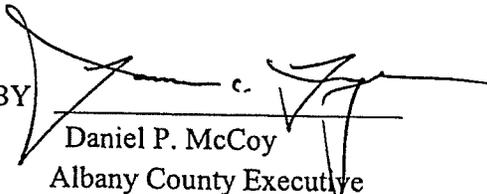
ARTICLE 32. EXECUTION OF DOCUMENTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) hereunder set forth.

COUNTY OF ALBANY

DATED: 2/8/2022

BY 

Daniel P. McCoy
Albany County Executive
or
Daniel C. Lynch
Deputy County Executive

BRAWN MEDIA

DATED: _____

BY: 

President

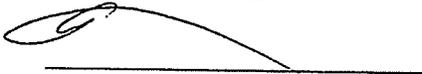
STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On the _____ day of _____, 2021, before me, the undersigned, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the 8th day of February, 2021, before me, the undersigned, personally appeared Daniel C. Lynch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

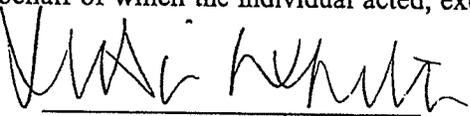


Notary Public

EUGENIA K CONDON
Notary Public, State of New York
No. 02CO4969817
Qualified in Albany County
Commission Expires July 23, 2022

STATE OF NEW YORK)
COUNTY OF Albany) SS.:

On the 28 day of JANUARY, 2022, before me, the undersigned, personally appeared Donna Bowman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Jessica Whitman
Notary Public, State of New York
Reg. No. 01WH6370679
Qualified in Rensselaer County
My Commission Expires February 5, 2022

SCHEDULE A

INSURANCE COVERAGE

Workers' Compensation and Employers' Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.

Automobile Liability Insurance: A policy or policies with the limits of not less than \$500,000 combined for each accident because of bodily injury, sickness, or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobile.

General Liability Insurance: A policy or policies of comprehensive all-risk insurance, including coverage for demolition of structures, with limits of not less than:

Liability For:	Combined Single Limit
Property Damage	\$1,000,000.00
Bodily Injury	\$1,000,000.00
Personal Injury	\$1,000,000.00