

CONTRACT AGREEMENT

This Agreement made and entered into this 20th day of July 2023, by and between the **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as "County", and **BCW, LLC**, hereinafter referred to as "BCW" or "Consultant", authorized to transact business in the State of Georgia.

WITNESSETH:

WHEREAS, the County and Fulton County Sheriff's Office are, and will be, working together to address concerns related to the Fulton County Jail and will work closely with BCW on issue management communication; and

WHEREAS, the County desires to engage BCW to perform all work required by the County in coordination with the Fulton County Sheriff's Office to develop and implement a strategic communication plan that ensures that the community has factual information about the Fulton County Jail, including plans for future improvements and a new replacement jail ("the Project"); and

WHEREAS, the BCW has the necessary licenses, permits, experience, personnel and facilities to perform the work; and

WHEREAS, Consultant has represented that it is experienced and has qualified and local staff available to commit to the Project.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, County and Consultant agree as follows:

1.0 Contract Documents

County and Contractor agree that the Agreement consists of the following contract documents:

- I. Form of this Contract Agreement
- II. Exhibit A, Scope of Work and Compensation
- III. Certificate of Insurance
- IV. Georgia Security and Immigration Contractor Affidavit

The Agreement was approved by the Fulton County Board of Commissioners on [Insert Board of Commissioners approval date and item number] with an effective date of July 20, 2023.

2.0 Scope of Work

The County hereby engages BCW to perform, and BCW agrees to perform, all work required by this Agreement to perform all tasks described in Exhibit A, Scope of Work and Compensation.

3.0 Consultant Representations

- (a) Consultant represents that it has, or will secure at its own expenses, all personnel required to perform all work to be completed under this Agreement.
- (b) The Consultant shall perform all services as an independent Consultant and not as an agent of the County.
- (c) The Consultant hereby agrees to perform the duties of this agreement and further agrees to furnish all labor, materials, tools and equipment specified or required for the completion of all work called for herein and as set forth in Exhibit A, Scope of Work and Compensation.
- (d) All personnel engaged in the Project by Consultant shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- (e) None of the work or services covered by this Agreement shall be transferred, assigned, or subcontracted by Consultant without prior written consent.
- (f) Consultant by the execution of this Agreement, acknowledges that it is possessed of that degree of care, learning, skill and ability which is ordinarily possessed by other members of its profession and further contract that in the performance of the duties herein set forth it will exercise such degree of care, learning, skill and ability as is ordinarily employed by Consultant under similar conditions and like circumstances and shall perform such duties without neglect.

4.0 Contract Modifications

If during the course of performing the Project, the parties agree that it is necessary to make changes in the Project as described herein and referenced exhibits, such changes will be incorporated by written amendments in the form of Change Orders to this Agreement. Any such Change Order and/or supplemental agreement shall not become effective or binding unless approved by the County and BCW. Such modifications shall conform to the requirements of Fulton County Purchasing Code §102-420 which is incorporated by reference herein.

5.0 Compensation

Compensation for work performed by BCW on Project shall be in accordance with Exhibit A, Scope of Work.

The total contract amount for the Project shall not exceed \$350,000.00 (Three Hundred Fifty Thousand Dollars and No Cents) which is full payment for Exhibit A Scope of Work for professional time only plus 10% contingency for expenses incurred. Expenses will be reimbursable as and invoiced separately with an itemized list of expenses for payment utilizing the contingency. Travel expenses will require prior written approval by the County. Expenses shall exclude meals.

6.0 Insurance

Contractor agrees to obtain and maintain during the entire term of this Agreement, all of the insurance required as specified by Risk Management with the County as an additional insured and shall furnish the County a Certificate of Insurance showing the required coverage, as listed below:

Proof of insurance must be provided to Fulton County Government prior to the start of any activities/services as described in the bid document(s). Any and all Insurance Coverage(s) and Bonds required under the terms and conditions of the contract shall be maintained during the entire length of the contract, including any extensions or renewals thereto, and until all work has been completed to the satisfaction of Fulton County Government.

1. WORKERS COMPENSATION/EMPLOYER'S LIABILITY INSURANCE – STATUTORY *(In compliance with the Georgia Workers Compensation Acts and any other State or Federal Acts or Provisions in which jurisdiction may be granted)*

Employer's Liability Insurance	By Accident	Each Accident	\$500,000
Employer's Liability Insurance	By Disease	Policy Limit	\$500,000
Employer's Liability Insurance	By Disease	Each Employee	\$500,000

2. COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)

Bodily Injury and Property Damage Liability	Each Occurrence	\$1,000,000
(Other than Products/Completed Operations)	General Aggregate	\$2,000,000
Products\Completed Operation	Aggregate Limit	\$2,000,000
Personal and Advertising Injury	Limits	\$1,000,000
Damage to Rented Premises	Limits	\$100,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Bodily Injury & Property Damage	Each Occurrence	\$1,000,000
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(Including operation of non-owned, owned, and hired automobiles)

4. **UMBRELLA LIABILITY** Each Occurrence \$1,000,000
(In excess of above noted coverages)

5. **PROFESSIONAL (E&O) LIABILITY** per Claim/Aggregate \$2,000,000
* Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor/vendor must procure and evidence full Extended Reporting period (ERP) coverage.

Certificates of Insurance

Contractor shall provide written notice to Fulton County Government immediately if it becomes aware of or receives notice from any insurance company that coverage afforded under such policy or policies shall expire, be cancelled or altered. Certificates of Insurance are to list Fulton County Government, Its' Officials, Officers and Employees as an Additional Insured (except for Workers' Compensation and Professional Liability), using ISO Additional Insured Endorsement form CG 20 10 (11/85) version, its' equivalent or on a blanket basis.

The Consultant insurance shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, non-contributory, and Waiver of Subrogation provided in favor of Fulton County.

Additional Insured under the General Liability, Auto Liability, Umbrella Policies (with exception of Workers Compensation and Professional Liability), with no Cross Suits exclusion.

If Fulton County Government shall so request, Consultant will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.

Such certificates and notices **must** identify the "Certificate Holder" as follows:

Fulton County Government
Attn: Purchasing and Contract Compliance Department
130 Peachtree Street, S.W.
Suite 1168
Atlanta, Georgia 30303-3459

Certificates must list Project Name (where applicable).
Contractor shall provide written notice to Fulton County Government immediately if it becomes aware of or receives notice from any insurance Contractor that coverage afforded under such policy or policies shall expire, be cancelled or materially altered. Certificates of Insurance are to list Fulton County Government,

Its Employees, Servants and Agents as an Additional Insured (except for Workers' Compensation), using Travelers Blanket Additional Insured Endorsement CGD246 or its equivalent for ongoing operations and completed operations for two years after substantial completion of Contractor's work."

The Contractor's insurance shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, non-contributory, and Waiver of Subrogation provided in favor of Fulton County.

7.0 Contract Commencement

The agreement shall be effective, upon approval by the Fulton County Board of Commissioners, from July 20, 2023 and continue through December 31, 2023.

8.0 Termination of Agreement for Cause

- (1) Either party may terminate work under this Agreement in the event the other party materially breaches under the provisions of the Agreement. Any party seeking to terminate this Agreement for cause is required to give thirty (30) days prior written notice to the other party within which time the breaching party has the opportunity to cure the breach.
- (2) Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.
- (3) **TIME IS OF THE ESSENCE** and if the Consultant refuses or fails to perform the work as specified in Exhibit A, Scope of Work and maintain the scheduled level of effort as proposed, or any separable part thereof, with such diligence as will ensure completion of the work within the specified time period, or any extension or tolling thereof, or fails to complete said work within such time. The County may exercise any remedy available under law or this Agreement. Failure to maintain the scheduled level of effort as proposed or deviation from the aforesaid proposal without prior approval of County shall constitute cause for termination.
- (4) The County may, by written notice to Consultant, terminate Consultant's right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the work and perform the same to completion, by contract or otherwise, and Consultant shall be required to provide all copies of paid-for finished or unfinished documents prepared by Consultant under this Agreement to the County.
- (5) Consultant shall be entitled to receive compensation for any work completed on such documents that have been provided to the County.

- (6) Notwithstanding the foregoing or anything to the contrary, it is understood and agreed that Consultant's timely performance is dependent on County's cooperation and Consultant will not be in breach or be held liable for any loss resulting from County's lack of cooperation.

9.0 Termination for Convenience of County

Notwithstanding any other provisions, the County may terminate this Agreement for its convenience upon thirty (30) days written notice to Consultant. If the Agreement is terminated, Consultant will be paid compensation for those services actually performed and incurred and/or committed to expenses that were previously approved in writing by the County. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by Consultant which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

10.0 Indemnification

The Consultant shall indemnify and hold harmless the County, its officers, agents and employees from and against any and all third-party claims against the County, its officers, agents and employees to the extent they arise out of the gross negligence of the Consultant in performing its obligations hereunder.

11.0 Permits and Licenses

All permits and licenses necessary in the ordinary course of Consultant's business for the work shall be secured and paid for by the Consultant. If any permit, license or certificate expires or is revoked, terminated, or suspended as a result of any action on the part of the Contractor, the Contractor shall not be entitled to additional compensation or time.

12.0 Invoicing and Payment

Consultant shall submit monthly invoices for work performed during the previous calendar month, in a form acceptable to the County and accompanied by all support documentation requested by the County, for payment and for services that were completed during the preceding phase. The County shall review for approval of said invoices.

Time of Payment: The County shall make payments to Contractor within thirty (30) days after the date of a proper invoice. Parties hereto expressly agree that the above contract term shall supersede the rates of interest, payment periods, and contract and subcontract terms provided for under the Georgia Prompt Pay Act, O.C.G.A. 13-11-1 et seq., pursuant to 13-11-7(b), and the rates of interest, payment periods, and contract and subcontract terms provided for under the Prompt Pay Act shall have no application to this Agreement; parties further agree

that the County shall not be liable for any interest or penalty arising from late payments.

Submittal of Invoices: Invoices shall be submitted as follows:

Via Mail:

Fulton County Government
141 Pryor Street, SW
Suite 7001
Atlanta, Georgia 30303
Attn: Finance Department – Accounts Payable

OR

Via Email:

Email: Accounts.Payable@fultoncountyga.gov

At minimum, original invoices must reference all of the following information:

- 1) Vendor Information
 - a. Vendor Name
 - b. Vendor Address
 - c. Vendor Code
 - d. Vendor Contact Information
 - e. Remittance Address
- 2) Invoice Details
 - a. Invoice Date
 - b. Invoice Number (uniquely numbered, no duplicates)
 - c. Purchase Order Reference Number
 - d. Date(s) of Services Performed
 - e. Itemization of Services Provided/Commodity Units
- 3) Fulton County Department Information (needed for invoice approval)
 - a. Department Name
 - b. Department Representative Name

Contractor's cumulative invoices shall not exceed the total not-to-exceed fee established for this Agreement.

Payment of Sub-Contractors/Suppliers: Upon reasonable request by the County, the Consultant must certify in writing that all subcontractors of the Consultant and suppliers have been promptly paid for work and materials and previous progress payments received. In the event the prime Consultant is unable to pay subcontractors or suppliers until it has received a progress payment from Fulton County, the prime Consultant shall pay all subcontractors or supplier funds due from said progress payments promptly after receipt of payment of progress

payments from Fulton County and in no event later than fifteen days as provided for by State Law.

13.0 Taxes

The Consultant shall pay all old age benefit and unemployment compensation taxes, consumer, use and other similar taxes, as well as any other taxes or duties on the materials, equipment, and labor for the work provided by the Consultant which are legally enacted by any municipal, county, state or federal authority, department or agency at the time bids are received. The Consultant shall maintain records pertaining to such taxes as well as payment thereof and shall make the same available to the County at all reasonable times for inspection and copying. The Consultant shall reasonably assist the County in applying for any and all tax exemptions which may be applicable and shall timely request from the County such documents and information as may be necessary to assist in obtaining such tax exemptions. The County shall have no liability to the Consultant for payment of any tax from which it is exempt.

14.0 Notices

Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

Notice to County, shall be addressed as follows:

Director
Department of External Affairs
141 Pryor Street, SW, Suite
Atlanta, GA 30303
Attn: Jessica Corbitt-Dominguez
E-mail: Jessica.corbitt@fultoncountyga.gov

With a copy to:

Chief Purchasing Agent
Department of Purchasing & Contract Compliance
130 Peachtree Street, S.W., Suite 1168
Atlanta, Georgia 30303
Attn: Felicia Strong-Whitaker
Email: felicia.strong-whitaker@fultoncountyga.gov

County Attorney
Office of the County Attorney
141 Pryor Street, SW, Suite 4001
Atlanta, GA 30303
Attention: Soo Jo

Email: soo.io@fultoncountyga.gov

Notices to Contractor shall be addressed as follows:

BCW, LLC
175 Greenwich Street
3 World Trade Center
New York, NY 10007
Attn: Mike Heimowitz
mike.heimowitz@bcw-global.com

With a copy to:

WPP
175 Greenwich Street
3 World Trade Center
New York, NY 10007
Attn: Legal

15.0 Limitation of Liability

The sole liability of Consultant and any of its Affiliates (whether in contract, tort, negligence, strict liability in tort, by statute or otherwise) for any and all claims in any manner related to this Agreement, including the Deliverables or Services, will be payment of direct damages of the aggregate amount of the contract which is currently not to exceed in three hundred eighty five thousand dollars (\$385,000.00) in the fees to be paid to the Consultant with respect to the Services or Deliverables under this Agreement. In no event will either party be liable for any consequential, incidental, indirect, special or punitive damage, loss or expenses (including, but not limited to, business interruption, lost business, lost profits or lost savings) even if it has been advised of their possible existence.

Nothing herein shall be construed to waive nor shall operate as a waiver of privileges and immunities available to the County under applicable law including, without limitation, sovereign immunity, governmental immunity, judicial immunity, or official immunity; all such privileges and immunities are expressly reserved and shall in no way be waived.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed and their corporate seals to be hereunto affixed as of the day and year date first above written.

OWNER:

FULTON COUNTY, GEORGIA

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

APPROVED AS TO CONTENT:

Patrick "Pat" Labat, Sheriff
Fulton County Sheriff's Office

CONSULTANT:

BCW, LLC

Sharon Balkam
Finance Director

ATTEST:

Secretary/Assistant Secretary

(Affix Corporate Seal)

ATTEST:

Notary Public

County:

Commission Expires:

(Affix Notary Seal)

APPROVED AS TO FORM:

Y. Soo Jo, County Attorney
Fulton County Office of the County Attorney

EXHIBIT A

SCOPE OF WORK AND COMPENSATION

First 30 Days

Kick-off Meeting – Following up on our initial conversation, we will take a deeper dive with you on the situation, including discussions of messengers; details of the Bridge plan; the state of all key stakeholder relationships, both internal and external; and expectations. Prior to the meeting, BCW will review all current messages and materials.

Develop Strategic Communication Plan – Based on the conversation at the kick-off meeting, we will develop a comprehensive plan that includes:

- Situation Overview – Our analysis of the situation, including strengths and opportunities
- Goals – What we will need to accomplish to achieve success
- Strategic Framework – How we will achieve the goals
- Messages – BCW will develop a Message House that includes:
 - Topline/overarching statement (the roof)
 - Core messages (the pillars)
 - Evidence, proof and support points for the core messages (the foundation)
- Materials that include:
 - *Frequently Asked Questions*
 - *Fact Sheets and Infographics*
- Stakeholder Communications - For each stakeholder, we will detail specific communications strategies and customized messages, along with the point person for each.

Once the plan, including messages, is approved, BCW will provide message training and then deploy messengers to deliver our positive narrative via meetings and media outreach.

Ongoing Support (starting immediately)

BCW's charge will include:

- Communications Counsel – Providing strategic guidance on a 24/7 basis, including anticipating and crafting strategies for new developments.
- Message and Materials Development – As needed, creating additional proactive and reactive message and materials.
- Media Support – Conducting or advising on proactive and reactive outreach.
- Media Monitoring/Analysis – As requested, conducting traditional, online and social media monitoring with analysis.

- Community Partnerships – Continue to refine relationships.
- Regular Check-in Calls – We will schedule in-person meetings and/or calls daily or less frequently, as needed, to discuss any relevant developments/issues and potential actions.

Preparedness

BCW will also enhance preparedness by developing scenario plans.

Budget:

First 60 Days - \$200,000 minimum retainer

- BCW will not exceed without your authorization; covers professional time only, not expenses
- The billing will be impacted by the scope of the plan and how the situation evolves.

Remainder of Year (after the first 60 days) - \$150,000 minimum retainer

- BCW will not exceed without your authorization; covers professional time only, not expenses

The total contract amount for the Project shall not exceed \$350,000.00 (Three Hundred Fifty Thousand Dollars and No Cents) which is full payment for Exhibit A Scope of Work for professional time only plus 10% contingency for expenses incurred. Expenses will be reimbursable and invoiced separately with an itemized list of expenses for payment utilizing the contingency. Travel expenses will require prior written approval by the County. Expenses shall exclude meals.

EXHIBIT B

CERTIFICATE OF INSURANCE

EXHIBIT C

**GEORGIA SECURITY AND IMMIGRATION CONTRACTOR AFFIDAVIT AND
AGREEMENT**

**STATE OF GEORGIA
COUNTY OF FULTON**

**GEORGIA SECURITY AND IMMIGRATION CONTRACTOR AFFIDAVIT AND
AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services¹ under a contract with **Burson Cohn Wolfe**, on behalf of **Fulton County Government** has registered with and is participating in a federal work authorization program*,² in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services to this contract with **Fulton County Government**, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the **Fulton County Government** at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

BY: Authorized Officer of Agent (Insert Contractor Name)

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this _____ day of _____, 20__.

Notary Public: _____

County: _____

Commission Expires: _____

¹O.C.G.A. § 13-10-90(4), as amended by Senate Bill 160, provides that “physical performance of services” means any performance of labor or services for a public employer (e.g., Fulton County) using a bidding process (e.g., ITB, RFQ, RFP, etc.) or contract wherein the labor or services exceed \$2,499.99, except for those individuals licensed pursuant to title 26 or Title 43 or by the State Bar of Georgia and is in good standing when such contract is for service to be rendered by such individual.

²*[Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603].