

STATE OF ALABAMA)

COUNTY OF BALDWIN)

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services is made and entered into by and between the Baldwin County Commission, the honorable county governing body of Baldwin County, Alabama (hereinafter called “COUNTY”), and QuickCaption, Inc., (hereinafter referred to as “PROVIDER”).

WITNESSETH:

WHEREAS, Title 28 part 35 of the Americans with Disabilities Act (ADA) requires that a public entity shall take the appropriate steps to ensure that communications with certain members of the public with disabilities be as effective as that with other members of the general public; and

WHEREAS, Title 28 Part 35 the ADA also requires that a public entity furnish auxiliary aids and services and thereby affording individuals with a disability an equal opportunity to participate; and

WHEREAS, COUNTY seeks to not only be compliant with the law but also to ensure an open and accessible forum to all citizens of Baldwin County; and

WHEREAS, the COUNTY considers it as a necessity to seek the expertise and services of a professional consultant for the purposes of better serving the citizenry of Baldwin County by offering real time closed captioning text feed as an auxiliary service to further enhance the currently provided broadcast of the COUNTY'S regular meetings; and

WHEREAS, the PROVIDER now approaches the COUNTY to represent and offer that it can adequately render services to the COUNTY in this respect and that it has all of the professional requirements, capabilities and qualities as needed for the services of a professional Broadcast Captioner.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

I. Definitions. The following terms shall have the following meanings:

COUNTY: Baldwin County, Alabama.

COMMISSION: Baldwin County Commission, the honorable county governing body of Baldwin County, Alabama.

PROVIDER:	QuickCaption, Inc.
CLOSED CAPTIONING:	Auxiliary services provided by a professionally qualified Broadcast Captioner.
AUXILIARY SERVICES:	The specific service, as-referenced by Title 28 Part 35 of the Code of Federal Regulations, as "closed captioning" and the like.
SHORT-NOTICE MEETING	Meetings falling outside of the regularly-scheduled meetings of the Baldwin County Commission.
REGULAR MEETING	Anyone of the regularly-scheduled meetings of the COUNTY as identified within the respective divisional/organizational resolution adopting the same.

- II. Obligations Generally. The COUNTY hereby retains, and the PROVIDER agrees to perform for the COUNTY, those services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.
- III. Recitals Included. The above recitals and statements are incorporated as part of this Contract and shall have the effect and enforceability as all other provisions herein.
- IV. Necessary Qualifications. For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that it possesses both the necessary equipment, resources and the professional, technical, and administrative personnel with the specific experience and training necessary to provide the services required herein. PROVIDER agrees that the COUNTY is acting in full reliance on this representation and that the COUNTY does not necessarily possess the expertise to ensure that PROVIDER does in fact possess same.
- V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.
- VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

- VII. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations whether or not said law or regulation is mentioned herein.
- VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.
- IX. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Agreement. Therefore, the PROVIDER does not in any manner act on behalf of COUNTY, and the creation of such a relationship is prohibited and void.
- X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- XI. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.
- XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.
- XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY. PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of its duties hereunder, without the COUNTY'S prior written consent, which may be withheld or granted in the sole discretion of the COUNTY. PROVIDER shall not have any rights of ownership or otherwise to the products created during or simultaneously with the respective broadcasts of the COUNTY.

XV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER: QuickCaption, Inc.
4927 Arlington Avenue
Riverside, California 92504

COUNTY: Baldwin County Commission
c/o Chairman
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

XVI. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally-qualified closed captioning provider. The general scope of work for the services shall include all the terms and conditions set forth herein by **“Exhibit A.”**

- A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails, etc. as requested. Additionally, PROVIDER will meet with COUNTY, or designees, as needed or requested.
- B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract. Notwithstanding this requirement, PROVIDER shall closely coordinate the subject services with the COUNTY and designated personnel.
- C. PROVIDER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVII. Attachments: The exhibits and/or attachments listed below are specifically included as a necessary part of this Contract and the same shall not be complete without such items, to wit:

- A. **Exhibit A** – QuickCaption, Inc. *Proposal for Closed Captioning Services dated November 23, 2020* (Scope of Work/Updated Key Personnel/Pricing) which is attached hereto in its entirety.
- B. **Exhibit B** – *Certificate(s) of Insurance*.

COUNTY and PROVIDER, if necessary, shall jointly cause such items as listed above to contain dates, signatures of the parties with authorization to make such signatures, and sufficient marks and references back to this Agreement noting their inclusion and attachment hereto. In any event of a conflict between this document and the attachments referenced above, this document shall govern.

XVIII. General Responsibilities of the COUNTY.

- A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.
- B. The COUNTY shall pay to PROVIDER the compensation subject to the terms set out herein.
- C. The COUNTY shall provide any necessary notices to commence, discontinue, or terminate the services herein described.

XIX. Termination of Services. The COUNTY or PROVIDER may terminate this contract, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

XX. Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY, unless the additional costs are approved by the COUNTY in the form of a written Change Order. Compensation to PROVIDER for work shall be paid in accordance with the Scope of Work (**Exhibit A**). Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services.

XXI. Method of Payment. PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXII. Effective and Termination Dates. This Contract shall be effective and commence on December 6, 2020, and the same shall terminate upon the expiration of thirty-six (36) months, on December 5, 2023, or upon written notification thereof received by either party pursuant to Section XIX herein related to termination of services. Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.

XXIII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIV. Indemnification. To the fullest extent allowed by law, PROVIDER shall indemnify, defend and hold COUNTY and its Commissioners, affiliates, employees, agents, and representatives (collectively "COUNTY") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon COUNTY, as a result of or in any manner related to provision of services hereunder, or any act or omission, by PROVIDER. PROVIDER shall provide the COUNTY with proof of the insurance coverage required herein, including without limitation, general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this agreement.

XXV. Number of Originals. This Agreement shall be executed with two (2) originals, both of which are equally valid as an original.

XXVI. Governing Law. This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVII. Insurance. Prior to performing services pursuant to this Contract, PROVIDER shall carry, with insurers satisfactory to COUNTY, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability

hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Worker’s Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer’s Liability Insurance fully covering all employees and supervisors participating in the work at/in/on any property, site, location, vessel, or equipment. *All liability insurance shall name the COUNTY as an additional insured.* Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to COUNTY, shall be furnished to COUNTY, which shall specifically state that such insurance shall provide for at least a thirty (30) day notice to COUNTY in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against COUNTY and COUNTY Representatives. Should PROVIDER fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, COUNTY may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold PROVIDER in material default and pursue any and all remedies available. Said Certificate of Insurance evidencing the requisite coverage is attached hereto as **Exhibit B** as if fully set forth.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the last day of execution by the COUNTY as written below.

BALDWIN COUNTY COMMISSION
“COUNTY” and/or “COMMISSION”

ATTEST:

 Joe Davis, III /Date
 Chairman

 Wayne Dyess /Date
 County Administrator

STATE OF ALABAMA)
 COUNTY OF BALDWIN)

I, _____, a Notary Public in and for said County and State, hereby certify that JOE DAVIS, III, as Chairman of the Baldwin County Commission, and WAYNE DYESS, as County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

GIVEN under my hand and seal on this the _____ day of _____, 2020.

 Notary Public
 Commission Expires:

**QUICKCAPTION, INC.
“PROVIDER”**

Antha Ward /Date
Its: _____

STATE OF _____)
COUNTY OF _____)

I, _____, a Notary Public in and for said County and State, hereby certify that ANTHA WARD as _____ of QUICKCAPTION, INC., whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and seal on this the _____ day of _____, 2020.

Notary Public
Commission Expires: