




Interoffice Memorandum

March 2, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM:  Carrie Mathes CFM, NIGP-CPP, CPPO, C.P.M., Manager,
Procurement Division

CONTACT: John Schmidt, Contract Management Administrator, Orange County
Convention Center
407-685-5822

SUBJECT: Approval and Execution of Assignment Agreement, Contract No. Y19-1036, Digital Advertising Services - Orange County Convention Center

ACTION REQUIRED:

Approval and execution of Agreement regarding Orange County, Florida's Assignment of County Contract No. Y19-1036 from Event Technology, LLC d/b/a Etech to Xponet Corporation d/b/a Xpodigital.

PURPOSE:

The Assignment Agreement will authorize all rights and obligations under this contract. The Assignment Agreement also includes an absolute and unconditional guarantee of performance. All pricing, terms, and conditions of the contract remain unchanged.

DISCUSSION:

On July 2, 2019, the Board authorized award of Contract Y19-1036 to Event Technology LLC, dba Etech for a projected revenue the County would receive in the amount of \$480,000 for an initial 3-year term.

Event Technology, LLC, dba Etech sustained hardship due to the COVID-19 pandemic, subsequently, they have dissolved and are waiting on the approval of the assignment as their assets have been sold. A significant portion of existing assets remain at the Convention Center and are in the process of being sold to Expodigital by Etech. The assignment of contract became a consideration when the current contractor began their proceedings of dissolution of business and its intent to sell its assets to Expodigital. In the vetting process, following guidance by Legal Services and Procurement, OCCC staff performed reference checks, evaluated Xpodigital's proposal and presentation documents and determined Expodigital to be viable and acceptable to perform these services.

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Approval and Execution of Assignment Agreement, Contract No. Y19-1036, Digital Advertising Services - Orange County Convention Center

The following are previous contract actions:

Amendment No. 1:

This amendment added operational exclusivity to the digital advertising services in Exhibit A, Scope of Services, Technical Requirements, Paragraph A, Overview and Objectives to the contract. No change to contract revenue totals.

AGREEMENT REGARDING ORANGE COUNTY, FLORIDA'S ASSIGNMENT OF

COUNTY CONTRACT NO. Y19-1036

FROM

EVENT TECHNOLOGY, LLC. D/B/A ETECH

TO

XPONET CORPORATION D/B/A XPODIGITAL

THIS CONSENT TO ASSIGNMENT AGREEMENT ("**Consent Agreement**") is entered by and between **ORANGE COUNTY, FLORIDA** (the "**County**"), a charter county and political subdivision of the State of Florida, with offices located at 201 South Rosalind Avenue, Orlando, Florida 32801, **EVENT TECHNOLOGY, LLC. dba ETECH** (the "**Assignor**"), a Florida limited liability company with offices at 13805 Sachs Ave., Orlando, Florida 32827, and **XPONET CORPORATION dba XPODIGITAL** (the "**Assignee**"), a Georgia for-profit corporation with offices at 8350 Parkline Boulevard., Suites 1-3, Orlando, Florida 32809.

RECITALS

WHEREAS, on or about September 9, 2019, the County and the Assignor entered County Contract No. Y19-1036, the most recent iteration of which was executed on October 1, 2019 (the "**County Contract**") and is attached to this Consent Agreement as "**Exhibit A**";

WHEREAS, pursuant to the County Contract, the Assignor agreed to, in compliance with the terms and conditions therein, serve as the Orange County Convention Center's exclusive provider of digital advertising services throughout the entire term of the Agreement; and

WHEREAS, on or about December 14, 2020, the Assignor sent a letter to the County stating its desire to assign to Assignee substantially all of the Assignor's assets, including all rights and liabilities contemplated in the County Contract; and

WHEREAS, Article 35 of the County Contract, entitled "Successors and Assigns," states that such County Contract shall not be assigned by the Assignor without the prior written consent of the County; and

WHEREAS, the Assignor and the Assignee desire to obtain the County's written consent to the assignment of the County Contract by the Assignor to the Assignee and the County is willing to provide such written consent to such assignment pursuant to the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Consent Agreement, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

Section 1. Recitals. The recitals above are true and correct and form a material part of this Consent Agreement.

Section 2. Assumption and No Release. The Assignee expressly assumes any and all rights, liabilities, and obligations that the Assignor has pursuant to the County Contract. In making this assumption, the Assignee agrees, for the benefit of the County, to be bound by, perform, and comply with, every duty and obligation in the County Contract to which the Assignor is bound, and to be treated as though it is the original

signatory of the County Contract in all regards. Notwithstanding such assignment, or the County's consent to such assignment, the Assignor will remain jointly and severally liable for the performance of all of its obligations of the Assignor under the County Contract for the remainder of the term of the County Contract, which includes any renewal terms or extensions expressly provided for therein.

Section 3. Subsequent Assignments; Recapture. This Consent Agreement does not constitute consent to any additional future assignment. Accordingly, this Consent Agreement does not relieve the Assignee of the obligation to obtain the written consent of the County to any future assignment of the County Contract. Notwithstanding the foregoing, the County may consent to subsequent assignments of the County Contract without notifying the Assignor, or anyone else liable under the County Contract, and without obtaining their consent, and such action by the County will not relieve those persons of liability.

Section 4. Default Under the Agreements. In the event of any default by the Assignee under the County Contract, the County may proceed directly against the Assignee, any guarantors, or anyone else liable under the County Contract without first exhausting the County's remedies against any other person or entity liable to the County under the County Contract. Notwithstanding the foregoing, any act or omission of the Assignee that violates any of the provisions of the County Contract will also be deemed a default under the County Contract by the Assignor that the County may, but is in no way required to, legally pursue.

Section 5. Laws and Venue. The terms and provisions of this Consent Agreement will be construed in accordance with, and will be governed by, the laws of the State of Florida. In the event a party deems it necessary to take legal action to enforce any provision of this Consent Agreement, venue shall be in the Circuit Court of the Ninth Judicial Circuit in Orange County, Florida.

Section 6. Captions. Captions to the sections in this Consent Agreement are included for convenience only and do not modify any of the terms of this Consent Agreement.

Section 7. Entire Agreement; Waiver. This Consent Agreement constitutes the final, complete, and exclusive statement between the parties to this Consent Agreement pertaining to the terms of the County's consent to the assignment of the County Contract, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors, and assigns. No party has been induced to enter into this Consent Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent Agreement. Any agreement made after the date of this Consent Agreement is ineffective to modify, waive, or terminate this Consent Agreement, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent Agreement, and specifically states that agreement modifies this Consent Agreement.

Section 8. Waiver of Jury Trial; Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent Agreement, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the parties waive any right to a trial by jury and, in the event of any commencement of litigation, the parties agree that they are responsible for their own attorney's fees regardless of which party prevails.

Section 9. Waiver. Except as explicitly stated in this Consent Agreement, nothing contained in this Consent Agreement will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the County Contract.

Section 10. Notice. Any notice that may or must be given by any party under this Consent Agreement shall be given by: (i) certified or registered mail, postage prepaid, return receipt requested, (ii) nationally recognized overnight courier service providing proof of delivery, or (iii) fax followed by confirmation under (i) or (ii).

As to the County:

Procurement Division, Orange County Government

400 E. South Street, Second Floor
Orlando, FL 32801
Attention: Zulay V. Millan, NIGP-CPP, CPPO, CPPB

And

Orange County Convention Center
9800 International Drive
Orlando, FL 32819
Attention: Mark Tester, Executive Director

As to the Assignor:

Event Technology, LLC. dba Etech
13805 Sachs Ave.,
Orlando, Florida 32827
Attention: Thomas E. Brandt, President and Managing Member

As to the Assignee:

Xponet Corporation dba Xpodigital
8350 Parkline Boulevard
Suites 1 - 3
Orlando, FL 32809
Attention: Gabriel S. Gilligan, President

Section 11. Severability. Should a term, or terms, of this Consent Agreement be rendered unenforceable or invalid, the remainder of this Consent Agreement shall continue to be upheld in full force.

Section 12. Signatory. Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Consent Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Consent Agreement as stated.

(SIGNATURES ON FOLLOWING PAGE.)

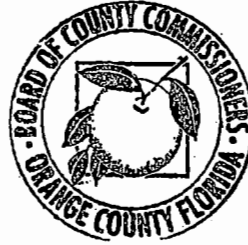
ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings, County Mayor

Date: MAR 23 2021

ATTEST/WITNESS
By: *Katie Smith*

Print Name: Katie Smith



ATTEST/WITNESS
By: *Vanessa Perez*

Print Name: Vanessa Perez

EVENT TECHNOLOGY, LLC dba ETECH
By: *Thomas E. Brandt*
Thomas E. Brandt, President and
Managing Member

ATTEST/WITNESS
By: *Maria Chase*

Printed Name: Maria Chase

XPONET CORPORATION dba XPODIGITAL
By: *Gabriel S. Gilligan*
Gabriel S. Gilligan, President