

**Service Agreement  
Between SANTA FE COUNTY and FIRESTIK STUDIO  
FOR Design and Implementation of DWI Public Awareness Campaigns**

**THIS AGREEMENT** is made and entered into on this 12 day of March 2019, by and between **SANTA FE COUNTY** (hereinafter the "County"), a political subdivision of the state of New Mexico, and **FIRESTIK STUDIO** (hereinafter the "Contractor").

**WHEREAS**, the County Community Services Department (CSD) requires professional development, design and implementation services for CSD's Driving While Impaired/Intoxicated (DWI) public awareness campaign(s); and

**WHEREAS**, pursuant to NMSA 1978, Section 13-1-112 and 13-1-117, competitive sealed proposals were solicited through Request for Proposals (RFP) No.2019-0053-CSD/CW; and

**WHEREAS**, the Contractor is licensed to do business in the State of New Mexico and is qualified and capable of providing professional development, design and implementation services for the DWI public awareness campaigns; and

**WHEREAS**, the County requires the services of the Contractor, and the Contractor is willing to provide these professional services and both parties wish to enter into this Agreement.

**NOW THEREFORE**, the parties agree as follows:

**1. SCOPE OF SERVICES**

Contractor will design and implementation DWI public awareness campaigns in the English and Spanish languages. Contractor will employ innovative and instructive techniques communicating to the public the dangers of driving while impaired/ intoxicated through creativity, design, graphic design, copy writing, production, and management of the campaigns; the printing of the campaigns' promotional materials; the development of website, mobile and social media campaigns; and, the distribution of information and materials through promotion.

**A.** The Contractor's specific services are:

- 1) Create two major County-wide public awareness campaigns annually with two ancillary campaigns each year in the English and Spanish languages for the DWI Program that focuses on:
  - a. Law enforcement efforts,
  - b. Consequences and costs associated with DWI
  - c. Issues relating to over-service and underage drinking,
  - d. The importance of designated driver, taxi and ride share services.
- 2) Develop innovative strategies to promote the campaigns in order to reach a broad spectrum of persons in Santa Fe County utilizing materials for distribution, bus wraps, website, mobile and social media avenues, and other imaginative and effective methods of communication.

- 3) Provide design, copy writing, printing, production, and management for promotional materials and media campaigns/publicities.
- 4) Produce promotional materials for distribution at public events and in businesses that serve or sell alcoholic beverages and intoxicating substances
- 5) Invent and produce campaigns on websites, mobile and social media avenues
- 6) Provide support during public awareness events, including attendance at press conferences, social media updates, and radio air spots

## **2. DELIVERABLES**

- 1) Two large-scale DWI prevention public awareness campaigns annually with two ancillary campaigns that reflect creative concept development, research of best practices, hosting of County focus groups, writing, art direction, and graphic design. Attachment A is the proposed milestones and schedule for performance of services.
- 2) Innovative tactics to promote the DWI prevention campaigns utilizing promotional techniques executed in the English and Spanish languages. All campaign promotional materials associated with each campaign will be produced and provided to County-designated entities and events.
- 3) Provide all copy writing, production, management, design and creative development, and printing of all promotional material in accordance with Attachment A that specifies the milestones and schedules.
- 4) Develop and place digital media with all County-approved locations
- 5) Support as requested by the County during public awareness events, including attendance at press conferences, social media updates, and other events as may be requested.

## **3. COMPENSATION, INVOICING, AND SET-OFF**

### **A. Contractor shall be compensated as follows:**

1. The services provided by the Contractor shall be compensated in accordance with Contractor's Fee Schedule and Cost Proposal on Attachment B.
2. The total amount payable to the Contractor for the first term of this Agreement shall not exceed \$107,000.00, inclusive of New Mexico grt.
3. This amount is a maximum and not a guarantee that the services to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The Contractor will notify the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing.
4. The Contractor shall submit a written request for payment to the County when

payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within 30 days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of 1.5% per month, until the amount due is paid in full.

5. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
6. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

#### **4. EFFECTIVE DATE AND TERM**

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one year later, unless earlier terminated pursuant to Section 7 (Termination) or Section 7 (Appropriations and Authorizations). The County has the option to extend the term of this Agreement on the same terms and conditions for three years in one-year increments, not to exceed four years in total. The County may exercise this option by submitting a written notice to Contractor that the term of this Agreement will be extended. The notice must be submitted to Contractor at least 60 days prior to expiration of the then current term.

#### **5. ADDITIONAL SERVICES**

- A. The parties agree that all tasks set forth in Paragraph 1 (Scope of Services) shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 3 (Compensation, Invoicing and Set-Off) of this Agreement, and for no other cost, amount, fee or expense.
- B. The County may from time-to-time request changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

**6. TERMINATION**

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for work performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

**7. APPROPRIATIONS AND AUTHORIZATIONS**

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

**8. INDEPENDENT CONTRACTOR**

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

**9. ASSIGNMENT**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

**10. SUBCONTRACTING**

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

**11. PERSONNEL**

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

**12. RELEASE**

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

**13. CONFIDENTIALITY**

Any confidential information provided to by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

**14. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL**

The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

**15. CONFLICT OF INTEREST**

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**16. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED**

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work) unless such changes are set forth in written amendment.

**17. ENTIRE AGREEMENT; INTEGRATION**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**18. NOTICE OF PENALTIES**

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

**19. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

- A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. Contractor agrees to abide by Santa Fe County Ordinance 2014-1 (Establishing a Living Wage). Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

**20. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW**

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the state district court of New Mexico, located in Santa Fe County.

## **21. RECORDS AND INSPECTIONS**

- A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).
- B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

## **22. INDEMNIFICATION**

The Contractor must agree to wholly indemnify the County for any and all loss, damages, costs, expenses (including, without limitation, legal fees and expenses) and liability (collectively hereinafter "Loss") resulting from errors, omissions, fraud, embezzlement, theft, negligence, (collectively hereinafter "Actions or Omissions") or neglect by the Contractor, its employees, officers, agents and directors in performing their duties under this Agreement. The Contractor must also acknowledge and agree that any loss shall, unless such loss can be demonstrated by the Contractor to have been due to a cause or causes beyond the reasonable control of the Contractor (such as acts of god, acts of the public enemy, insurrections, riots, fires, explosions, orders or acts of civil or military authority and other cataclysmic events, to the extent all reasonable and diligent precautions by the Contractor could not have been prevented the damage or loss resulting from such event) be conclusively presumed to be the result of Actions or Omissions on part of the Contractor. Limited exceptions to this indemnification requirement may be permitted in any agreement entered by the County with the Contractor as to information supplied by the County Treasurer's Office pursuant to any safekeeping or other collateral agreement or such other

limited exception as may be required in order to enable the provision of a particular service by the Contractor. Any such limited exception must be included in this Agreement and be acceptable to and specifically approved by the County.

**23. SEVERABILITY**

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

**24. NOTICES**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County  
Attn: Katherine Miller  
Office of the County Manager  
P.O. Box 276  
102 Grant Avenue  
Santa Fe, New Mexico 87504-0276

To the Contractor: Firestik Studio  
Attn: Eric Griego  
1012 Marquez Place, Unit 105B  
Santa Fe, NM 87505

**25. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

The Contractor hereby represents and warrants that:

- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.
- C. Contractor is legally registered and licensed to operate as a business in New Mexico to do the work anticipated by this Agreement and shall maintain such registration and any applicable licensure in good standing throughout the duration of the Agreement.

**26. FACSIMILE SIGNATURES**

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

**27. LIMITATION OF LIABILITY**

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2 (Compensation and Invoicing) of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

**28. NO THIRD-PARTY BENEFICIARIES**

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

**29. INSURANCE**

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

**30. PERMITS, FEES, AND LICENSES**

Contractor shall procure all applicable permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful of its obligations hereunder.

**31. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**32. CAMPAIGN CONTRIBUTION DISCLOSURE FORM**


The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

**33. SURVIVAL**

The provisions of following paragraphs shall survive termination of this Agreement: INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; and SURVIVAL.


**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of last signature by the parties.

**SANTA FE COUNTY:**

  
Katherine Miller,  
Santa Fe County Manager


3-12-19  
Date

Approved as to form:

  
R. Bruce Frederick  
Santa Fe County Attorney

3/8/19  
Date

Santa Fe County Finance Department:

  
Erika D. Thomas  
Interim Finance Director

3-11-19  
Date

CONTRACTOR:

  
\_\_\_\_\_

3/11/19  
Date

By: ERIC GRIEGO, OWNER  
(Print name and title)



**ATTACHMENT B**

**Fee Schedule**





Display Week:

1

Mar 4, 2019

Mar 11, 2019

Mar 18, 2019

Mar 25, 2019

Apr 1, 2019

Apr 8, 2019

4 5 6 7 8 9 # # # # # # # # # # # # # # # # # # # 1 2 3 4 5 6 7 8 9 # # # #

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to finalize digital media placement

3/25/19

4/1/19



al media

5/6/19

5/15/19

date

date

date

date



Apr 22, 2019							Apr 29, 2019							May 6, 2019							May 13, 2019							May 20, 2019							May 27, 2019							Jun 3, 2019							Jun 10, 2019							Jun 17, 2019							Jun 24, 2019																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
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February 25, 2019

## FEE SCHEDULE

### Design

\$ 125.00 pr/hr

- Graphic Design
- Art Direction
- Concept Development and Copy-writing

### Account Management

\$ 75.00 pr/hr

- Accounting
- Client Meetings
- Research
- Printing negotiation

### Media / Advertising

\$ 75.00 pr/hr

- Research
- Planning
- Placement
- Evaluation
- Negotiation
- Maintenance
- Reports



February 25, 2019

## COST PROPOSAL

DWI AWARENESS CAMPAIGN - sample budget of \$100,000 exclusive of NMGR

The development of this cost proposal consists of four focus areas including: account management, design and conceptual development, print collateral material and media placement. This sample budget of \$100,000 dollars would cover a total of 4 campaigns: spring, summer, fall and winter.

## SPRING

<b>Account Management</b>   including but not limited to: accounting, client meetings, research, print management and negotiations	\$ 2,000.00
<b>Design and Conceptual Development</b>   including but not limited to: concept development, writing, art direction and graphic design	\$ 8,000.00
<b>Print Collateral</b>   including but not limited to: posters, coasters, napkins, apparel, banners, signage	\$ 7,000.00
<b>Media Placement</b>   including but not limited to: outdoor signage (bus and/or billboard), newsprint inserts, business to consumer signage (digital video and print), social media management and/or paid social media advertisements (in addition to organic postings)	\$ 8,000.00
<b>spring subtotal:</b>	\$ 25,000.00

## SUMMER

<b>Account Management</b>   including but not limited to: accounting, client meetings, research, print management and negotiations	\$ 2,000.00
<b>Design and Conceptual Development</b>   including but not limited to: concept development, writing, art direction and graphic design	\$ 8,000.00
<b>Print Collateral</b>   including but not limited to: posters, coasters, napkins, apparel, banners, signage	\$ 7,000.00
<b>Media Placement</b>   including but not limited to: outdoor signage (bus and/or billboard), newsprint inserts, business to consumer signage (digital video and print), social media management and/or paid social media advertisements (in addition to organic postings)	\$ 8,000.00
<b>summer subtotal:</b>	\$ 25,000.00



## SUMMER 2

**Account Management** | including but not limited to: \$ 2,000.00  
accounting, client meetings, research, print management and negotiations

**Design and Conceptual Development** | including but not limited to: \$ 8,000.00  
concept development, writing, art direction and graphic design

**Print Collateral** | including but not limited to: \$ 7,000.00  
posters, coasters, napkins, apparel, banners, signage

**Media Placement** | including but not limited to: \$ 8,000.00  
outdoor signage (bus and/or billboard), newsprint inserts, business  
to consumer signage (digital video and print), social media management  
and/or paid social media advertisements (in addition to organic postings)

**fall subtotal:** \$ 25,000.00

## FALL

**Account Management** | including but not limited to: \$ 674.00  
accounting, client meetings, research, print management and negotiations

**Design and Conceptual Development** | including but not limited to: \$ 8,000.00  
concept development, writing, art direction and graphic design

**Print Collateral** | including but not limited to: \$ 7,000.00  
posters, coasters, napkins, apparel, banners, signage

**Media Placement** | including but not limited to: \$ 8,000.00  
outdoor signage (bus and/or billboard), newsprint inserts, business  
to consumer signage (digital video and print), social media management  
and/or paid social media advertisements (in addition to organic postings)

**winter subtotal:** \$ 23,674.00

**subtotal:** \$ 98,674.00

**NMGRT:** \$ 8,325.62

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**TOTAL:** \$ 106,999.62

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