

**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND HK ADVERTISING
TO PROVIDE ADVERTISING AND PROMOTIONAL SERVICES**

THIS AGREEMENT is made and entered into this 31ST day of AUGUST 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **HK ADVERTISING**, whose principal address is 41 Bisbee Ct. Suite A1, Santa Fe, New Mexico hereinafter referred to as the "Contractor".

WHEREAS, tourism is an important component of the County's economy; accounting for 12.4% of overall employment. The County has many cultural corridors and is considered the "gateway" to northern New Mexico; and

WHEREAS, the County is a part of the Northern Rio Grande National Heritage Area, and is recognized by the United States Congress for its unique natural, cultural and historic contributions; and

WHEREAS, the Lodger's Tax Act, NMSA 1978 Sections 3-38-13 through 3-38-24, and the County's Ordinance 1999-10 support advertising and promoting tourism throughout the County; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal Request for Proposals (RFP) No. 2015-0307-FI/MY for the provision of advertising and promotional services; and

WHEREAS, based upon the evaluation criteria established within the RFP for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive and highly rated offeror; and

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

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

Contractor shall perform necessary and County-approved advertising and related promotional services and activities that target the tourism assets available in the County and that reflect the County's economic development goals and objectives as identified in the County's Economic Development Plan.

The Contractor will include strategies for increasing shoulder season tourism, and include examples of marketing materials and concepts, with a comprehensive social media and target strategy approach. The Contractor shall obtain County approval, in advance and in writing, for concepts and costs for advertising and promoting County tourism that may include, but not be limited to, advertising and promoting centers, facilities, areas or activities that exist within Santa Fe County, and any collaborative efforts with other governmental entities, as appropriate. Contractor shall perform the following activities under this Agreement:

The Contractor shall provide, without limitation, the following services.

1. The Contractor shall coordinate with Santa Fe County representatives to develop strategies, goals and objectives to be used in the advertising, promoting and publicizing of Santa Fe County as a tourist destination for in-state, national and International travelers.
2. After coordination and input from the County, as required in this Scope of Work, Contractor shall submit an annual marketing, media and public relations plan, subject to County approval that will maximize the effectiveness of all existing and new marketing efforts that achieve the County's established goals and objectives for attracting tourism. This will include messaging, themes, and concepts, as well as examples of marketing/promotional material. The Contractor shall include in its annual marketing plan a report on the previous year's success. The Contractor shall provide a proposed system for measuring the success of the advertising and promotional efforts and strategies within the requirements of the contract.
3. The Contractor shall produce all advertising and promotional materials related to all activities and initiatives approved by the County under this SOW including, but not limited to, broadcasting, print advertisements, social media, place, print and broadcast media insertion materials and oversee the completion, fulfillment and processing of all such activities.
4. The Contractor shall establish and maintain a website intended to promote and publicize tourist activities and attractions in the unincorporated county.
5. The Contractor shall provide and produce a review and analysis of any ongoing or new media and marketing efforts for advertising, promoting and publicizing tourism in the County as requested by the County.
6. The Contractor shall prepare and submit for approval by the County, a budget of the annual contract dollars for all activities and promotional efforts requested by the County. The Contractor shall be responsible for administering and monitoring contract expenditures in accordance with the County approved budget for work related to this Agreement. Budget reports shall be due quarterly or whenever County determines such reports need to be completed. The Contractor shall also submit budget revision recommendations for approval by the County or as determined necessary by the County.
7. The Contractor shall prepare grant applications and grant proposals for advertising related grants as identified and requested by the County (e.g., NM Department of Tourism).
8. The Contractor shall prepare and submit monthly progress reports and orally present the reports at the Lodgers' Tax Advisory Board meetings of all activities performed under this Agreement. The Contractor shall also present its annual report, all updates

of the annual plan and report on work completed under this Agreement to the Board of County Commissioners when and as requested by the County.

9. The Contractor shall perform other services or tasks as deemed necessary by the County in relation to promoting and advertising tourism for Santa Fe County pursuant to this Agreement and Scope of Work.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and 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 work 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 a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

- A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A.
- 2) The total amount payable to the Contractor under this Agreement shall not exceed Three Hundred Thousand Dollars (\$300,000.00) inclusive of New Mexico gross receipts tax. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 3) This amount is a maximum and not a guarantee that the work assigned 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 County will notify the Contractor 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.

B. 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 thirty (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 thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. 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.

D. 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 become effective on the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to renew on the same terms and conditions for three (3) additional one (1) year terms not to exceed four (4) years in duration.

5. 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 thirty (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 thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (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 fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. CONFIDENTIALITY

Any confidential information provided to or developed 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.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. 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.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright. The Contractor shall retain full ability to use in its website any and all information, photos, and digital media that may be gathered through completion of work pursuant to this Agreement.

14. 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.

15. 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), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. 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.

17. 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.

18. 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. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. 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. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. 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 state district courts of New Mexico, located in Santa Fe County.

20. 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 (6) 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 (6) 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.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. 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.

23. 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
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: (See Section 31- Agent)

24. 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 is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes, unless original signature is required pursuant to County Resolution 2006-60, Santa Fe County Purchasing Regulations and Policy Manual.

26. NO THIRD-PARTY BENEFICIARIES

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

27. 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 \$1,000,000.00 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. Santa Fe County shall be a named additional insured on the policy.

C. 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.

28. PERMITS, FEES, AND LICENSES

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

29. 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.

30. 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.

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS,

The Contractor hereby irrevocably appoints David C. Hayduk, located at 41 Bisbee Court A1, Santa Fe, NM 87508 as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

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

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date first written above.

SANTA FE COUNTY:


Robert A. Anaya
Chair, Board of County Commissioners

8/11/15
Date


Geraldine Salazar
Santa Fe County Clerk

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney

7/29/15
Date

FINANCE DEPARTMENT

Carole H. Jaramillo
Carole H. Jaramillo
Santa Fe County Finance Director

7/31/15
Date

CONTRACTOR:

David C. Hyduk
(Signature)

8-3-15
Date

David C. Hyduk
(Print Name)

President
(Print Title)

EXHIBT A

HK Pricing and Services, pursuant to Section 3, Compensation, Invoicing and Set-Off

Account Services

The Agency will make such studies of your product or services, your markets and your competitors as are necessary to plan an integrated advertising program. The Agency will prepare a Plan of advertising, including a budget, for your advance approval. We will then execute the Plan using our best efforts, and measure the plan's results using the most appropriate means and methodology.

Creative Services

The Agency will write, design, illustrate, lay out or otherwise prepare advertisements, broadcast commercials and programs called for in the approved Plan or as otherwise directed. We will, as requested, prepare direct mail advertising, publicity materials, catalogs, booklets, manuals, sales letters, dealer ads, and other advertising, publicity or promotional materials.

Production Services.

The Agency will place Purchase Orders as your agent and for your account, pursuant to the approved Plan, for all required outside art-work, color separation, engravings, type composition, audio/visual production services and other mechanical services required for your advertising.

Market Research

Market research, market analysis and special field studies will be billed to you at the Agency's hourly rate for such services.

Public Relations

Researching and writing press releases, distributing them to a network of publication /broadcast sources and follow through. Organizing timely press conferences and working with a large network of editors and publications and broadcast stations.

Media Services

Evaluation. The Agency will evaluate all advertising media according to coverage, cost and effectiveness, and submit detailed recommendations. The Agency will order the space, time or other means of advertising, endeavoring to secure the most advantageous rates available for the Client.

Print Advertising. Print advertising, authorized under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Broadcast Advertising. Broadcast advertising authorized by you under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Web Site Design. Broadcast advertising authorized by you under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Outdoor Advertising. Outdoor advertising, authorized under the Plan, and purchased by us for your account, will be billed to you at the end of each month.

Traffic. The Agency will forward copy, printing plates, audio and video recordings, and other materials to the appropriate media; supervise radio and television production; check invoices from vendors for the Client's account, and where the Agency has received funds on account and has been so instructed, pay the invoice or statement for the client.

Other Services:

Purchased Products and Services. All outside purchases authorized by you under the Plan will include 20% earned commission to the agency and will be billed to you at the end of the month.

Additional Service. Any Additional services or products not included in the Plan, will be approved in advance by the Client at the Agency's cost.

Miscellaneous Expenses. Miscellaneous expenses such as long distance telephone calls, freight, special deliveries, photo copies, and the like, will be billed to the Client at the Agency's cost.

Agency Fees:

Commissions on Media. All media placement charges to the Client will include a 15% earned commission to the Agency. All media will be authorized by the Client before placement by the Agency for the Client's account.

Agency Services. The Client will pay the Agency an hourly fee for all "in house" services authorized by the Plan. The fee will vary depending upon the nature of the work. A representative schedule of the fees is available for the Client's inspection at any time during the term of this Agreement.

Reimbursable Expenses. The Agency will be paid by the Client for travel expenses incurred in the regular servicing of the Client's account.

Extraordinary Expenses. Where the Client requests the Agency to send personnel on special assignments out-of-town, including market surveys, special research work, or sales meetings, the expenses will be paid by the Client. The agency will submit an estimate of such expense to the Client for its prior approval.

Account Services	\$125 per hour
Creative Concept & Design	\$125 per hour
Copywriting	\$100 per hour
Production Art	\$100 per hour
Broadcast Production	\$125 per hour
Website Maintenance	\$95 per hour
Media Analysis & Planning	\$95 per hour
Public Relations	\$125 per hour

Total: \$300,000 inclusive of NMGRT

