

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN WAREHOUSE 21 AND SANTA FE COUNTY,
TO PROVIDE ADVERTISING FOR SANTA FE COUNTY
AND TOURISTS-RELATED ATTRACTIONS IN SANTA FE COUNTY**

THIS AGREEMENT is made and entered into as of this 17th day of September, 2014, by and between Santa Fe County, hereinafter referred to as "County", a political subdivision of the State of New Mexico and Warehouse 21, a Santa Fe not-for-profit organization with a principal address located at 1614 Paseo De Peralta, Santa Fe NM 87501, hereinafter referred to as "Contractor".

RECITALS

WHEREAS, according to § 3-38-21 NMSA 1978 and Santa Fe County Ordinance 1999-10 (the Lodgers' Occupancy Tax), Santa Fe County through the Lodger's Tax Advisory Board and the County Growth Management, Economic Development, may expend funds for tourist-related attractions including the advertising and promotions of tourist-related attractions;

WHEREAS, according to the Santa Fe County Sustainable Growth Management Plan (SGMP) and the County Economic Development Plan, film/digital media is a target industry for Santa Fe County as it is an industry that creates jobs, generates gross receipts tax, and promotes economic development in Santa Fe County;

WHEREAS, the Santa Fe Independent Film Festival is an annual film festival that attracts thousands of participants and tourists and it has proven to have a positive financial impact of more than \$500,000;

WHEREAS, Warehouse 21, a non-profit organization, is the fiscal agent for the Santa Fe Independent Film Festival and has been providing advertising and promotional services for the Film Festival;

WHEREAS, in accordance with the economic development goals of the SGMP, Santa Fe County desires to obtain advertising and promotional services from Warehouse 21 to prepare advertising for Santa Fe County and promote tourist-related attractions and film/digital media in the County such as the 2014 Santa Fe Independent Film Festival.

NOW THEREFORE, the Contractor and County agree to enter into a Professional Services Agreement as follows.

1. SCOPE OF WORK

The Contractor shall complete the Scope of Work described in Attachment 1 (Scope of Work) attached hereto.

2. COMPENSATION, INVOICING, AND SET-OFF

- A. In consideration of its obligations under this Agreement, County shall pay Contractor as follows:
- 1) The total amount payable to the Contractor under this Agreement shall not exceed Seven Thousand Dollars (\$7,000.00), inclusive of New Mexico gross receipts tax.
 - 2) This amount is a maximum and not a guarantee that the work and services assigned to be performed by the 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 shall notify the County when the services provided under this Agreement reach the total compensation amount.
- B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within fifteen (15) days of County's receipt of the written request, County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that 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, County shall tender payment for the accepted items or services. In the event County fails to render payment within thirty (30) days of the written certification accepting the items or services, 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 Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as 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 County to recover excessive or illegal payment.

3. 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 October 20, 2014, unless earlier terminated pursuant to Section 4 (Termination) or 5 (Appropriations and Authorizations) of this Agreement.

4. 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 ten(10)

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 with ten (10) days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten (10) 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 County. County may, in its discretion terminate this Agreement at any time for any reason by giving Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than ten(10 days from Contractor's receipt of the notice. County shall pay Contractor for acceptable work, determined in accordance with the requirements set forth in this Agreement, performed before the effective date of the termination but shall not be liable for any work performed after the effective date of termination. Such termination shall be without penalty to the County, and County shall have no duty to reimburse Contractor for expenditures made in the performance of this Agreement.

5. APPROPRIATIONS AND AUTHORIZATIONS

The County is expressly not committed to expenditures of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. 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 Contractor in any way or forum, including a lawsuit.

6. INDEPENDENT CONTRACTOR

Contractor and its agents and employees are independent contractors and are not employees or agents of County. Accordingly, 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 County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

7. 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 County's advance written approval shall be null and void and without any legal effect.

8. SUBCONTRACTING

Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of County. Any attempted

subcontracting or delegating without County's advance written approval shall be null and void and without any legal effect.

9. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. 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 County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

10. RELEASE

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

11. 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 prior approval from the County.

12. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHTS

- A. 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. 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, County shall own any such copyright.

13. CONFLICT OF INTEREST

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

14. 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. Contractor specifically

acknowledges and agrees that County shall not be responsible for any changes to Attachment 1- Scope of Work of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

15. 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.

16. NOTICE OF PENALTIES

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

17. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with 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 acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

18. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, Contractor shall comply with all applicable laws, ordinances, and regulations, including Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).
- 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.

19. RECORDS AND INSPECTIONS

- A. To the extent its books and records relate to (i) their 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 Contractor agrees to (i) maintain such books and records during the term of this Agreement for a period of three (3) years from the date of final payment under this Agreement; (ii)

allow 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) their 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 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 three (3) years from the date of final payment under the subcontract:(ii) to allow County or its designee to audit such books and records at reasonable times and upon reasonable not notice; and (iii) to keep such books and records in with GAAP.

20. INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold harmless 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 Contractor’s performance or non-performance of its obligations under this Agreement, including but not limited to Contractor’s breach of any representation or warranty made herein.
- B. County shall have the right to approve any counsel retained by Contractor to defend any demand, suit, or cause of action in which County is named, such approval not to be unreasonably withheld. Contractor agrees (i) that 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 (ii) that such suit will not be settled without County’s consent, such consent not to be unreasonably withheld. If in County’s judgment, a conflict exists between the interests of County and Contractor such demand, suit, or cause of action, County may retain its own counsel, whose fees shall be paid by Contractor.
- C. Contractor’s obligations under this section shall not be limited by the provisions of any insurance policy Contractor is required to maintain under this Agreement.

21. 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.

22. 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: Ana Gallegos Y Reinhardt, Executive Director
Warehouse 21
1614 Paseo De Peralta
Santa Fe, New Mexico 87501

23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

- A. It is corporation duly organized and in good standing under the laws of the state of New Mexico.
- B. This Agreement has been duly authorized by Contractor, the person executing this Agreement has authority to do so, and once executed by Contractor, this Agreement shall constitute a binding obligation of Contractor.
- C. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's articles of incorporation or by-laws or any corporate resolution adopted by Contractor.

24. LIMITATION OF LIABILITY

County's liability to Contractor for any breach of this Agreement by 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 County be liable to Contractor for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into this Agreement.

25. NO THIRD-PARTY BENEFICIARIES

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

26. INSURANCE

- A. General Conditions. 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. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any

one occurrence. Said policies of insurance shall include coverage for all operations performed for County by 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. County of Santa Fe shall be named additional insured on the policy.

- C. Workers' Compensation Insurance. 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), Contractor shall increase the maximum limits of any insurance required herein.

27. 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.

28. FACSIMILE SIGNATURES

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

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

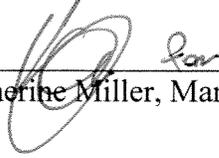
The Contractor agrees to compute and submit simultaneous and execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. 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.

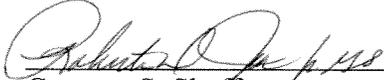
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTA FE COUNTY


Katherine Miller, Manager

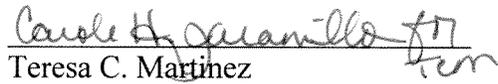
9.16.14
Date

APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney

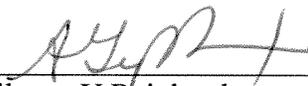
9/12/14
Date

FINANCE DEPARTMENT APPROVAL


Teresa C. Martinez
Santa Fe County Finance Director

9/15/14
Date

CONTRACTOR


Ana Gallegos Y Reinhardt
Executive Director
WAREHOUSE 21

9/17/14
Date

FEDERAL IDENTIFICATION NO.

85-04-2899

Attachment 1- Scope of Work

Scope Statement

Warehouse 21 will provide advertising to Santa Fe County on an app for the 2014 Santa Fe Independent Film Festival to be held from October 15 through 19, 2014 in Santa Fe, NM. The purpose of the marketing app is to enhance the participants' experience by providing iPhone content and information relating to the film festival, such as film reviews, showing times, locations, ticket purchase options, etc. The app will maximize new marketing exposure and promotion for Santa Fe County businesses in the unincorporated area by linking app users to the www.seesantafe.org website and position Santa Fe County as a major destination to "eat, work, play" via the 2014 Santa Fe Independent Film Festival (SFIFF).

Marketing app will provide the following metrics:

- Comprehensive metrics on users for this new marketing platform
- Internet traffic sourced from app to Santa Fe business, education and industry websites
- Internet traffic sourced from app to Facebook, Twitter and other social media sites
- Qualitative information via interactive survey on "Best of Santa Fe"

Deliverables

The marketing/advertising app on which the County is purchasing advertising will include the following interactive components:

- SFIFF schedule of screenings with film information and trailers, special events and education programs, My Calendar with links to Twitter, Facebook, link to SFIFF Facebook for film ratings
- Sponsors including venues, lodging, dining, film industry, educational institutions, government, marketing and other community business partners
- Santa Fe County button linking to Santa Fe County ad site for dining, accommodations, recreation (top attractions listed and linked to websites i.e. Bicycle Technologies, Inc., for recreational biking, etc) and Film initiatives
- (1) Full Screen ad per day featuring County ad site There are only 3 Full Screen Ads per day that open upon entering the app and is available for 24 hours in a continuous loop). Each Full-Screen ad will link to ad sponsor website.
- Marketing metrics and data component including number of users, hits from apps to websites, app download source, shares to Twitter, Facebook, etc. and link to qualitative survey on "Best of Santa Fe" experience.
- High quality full-screen ads for top sponsors representing a cross sector of industry and educational venues

Exclusions

- Geo-locator function will not be included
- Due to iPhone App approval process, final launch date will be based on this approval

Milestones

ID	Milestone	Completion Date
Contractor	Design & Development update of interactive components and	

	data required. Complete Apple application for app and accounts	
Contractor	App reaches alpha stage – W21/SFIFF approval	
SFIFF /County	Data delivery from SFIFF, County	
Contractor	App reaches beta stage - W21/SFIFF approval and No Changes after this beta phase	
Contractor	App submitted to iPhone	
Contractor	App launched for download.	October 1, 2014
SFIFF & Contractor	Metrics report and SFIFF qualitative data report	

Stakeholder	Responsibility
Contractor/SFIFF	Design approval, data production
Contractor	App design, delivery, launch
Santa Food Policy Council	Data production
Santa Fe County	Data production

Advertising Flat Fee Rate

	Cost
The flat fee for the advertising on the app meeting the specifications set forth herein shall be \$7,000.00, inclusive of NM grt. This flat fee shall be payable no later than the date the app is launched for download. The Contractor shall provide to the County a copy of any final report pertaining to the results and success of the advertising purchased by the County.	\$7,000.00, inclusive of NM grt

