

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN SANTA FE COUNTY AND DESERT ELEMENTS DESIGN, INC.
TO PROVIDE WEBSITE GRAPHIC DESIGN AND MAINTENANCE SERVICES**

THIS AGREEMENT is made and entered into on this 2nd day of August, 2016, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **DESERT ELEMENTS DESIGN, INC.** (hereinafter referred to as the "Contractor").

WHEREAS, the Santa Fe County Sheriff needs design and development services with Content Management System (CMS) for its website; and

WHEREAS, pursuant to NMSA 1978, §13-1-125, these services were procured as a small purchase for webhosting and maintenance services; and

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

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

Overview. The following scope of services is considered as a basis for the design and development of a website with a CMS.

A. Contractor shall:

- 1) Collaborate with the County Sheriff in selecting a pre-made WordPress template and configuring for use for the website, customizing where possible.
- 2) Website information architecture (site mapping/ navigation and organization) consulting to create a final sitemap and features/ functionality requirements document.
- 3) Integration of approved interface design (theme) with newly built website. (All interior website pages will utilize the same template (theme) unless otherwise noted, with content insured into the design. Content is defined as text, images, documents for download, embed code for video, photo galleries and audio.
- 4) Hosted WordPress installation and configuration. Installation and configuration of WordPress plugins for new, hot sheets data, and contact form.
- 5) Specific website/ WordPress features and functionality:
 - a) Edit page content (text, images, documents for download, photo galleries, embed code for video) throughout the website.
 - b) New database: a listing of new headlines, dates, and short descriptions with a link on each headline to a detail page, pdf, or external link of each item. Automatic archiving.
 - c) Hotsheets database: a listing of hotsheet item with date/ time posted, titles,

- and description content. Automatic archiving.
- d) Contact form: website visitors can fill in and submit a contact form.
- 6) Content migration of 13 existing website pages' content and hotsheets database content currently hosted/ shown at <http://www.santafecountynm.gov/sheriff>.

Standard Services and Deliverables:

- 1) Initial consulting and project definition to create a detailed project requirements document.
- 2) Website project specification document (technical documentation). *Not applicable to WordPress platform websites.*
- 3) Design documentation, source files, and graphics specifications.
- 4) Stock photography, fonts, and any other media purchased for the design of the website with costs reimbursed to Contractor.
- 5) Website software/ script (such as Google Analytics) installation and configuration as needed.
- 6) Launch coordination and assistance with website hosting migration and email account setup, if needed.
- 7) CMS training for the County Sheriff and staff and ongoing technical support for questions on using the website and DMS/ WordPress platform.
- 8) Coordination of work order estimates for further development of the site as requested.
- 9) A 30-day post-launch warrant on all work.

Maintenance:

- 1) Ongoing, regular maintenance needs and support after the website launches and passes the warranty period. Maintenance and support include but is not limited to:
 - a) Answering phone or email questions about the website, domain registrations, hosting and related topics.
 - b) Troubleshooting and investigating site errors.
 - c) Testing forms and other website interactive functionality.
 - d) Assisting website CMS users with questions on CMS functionality.
 - e) Installing routine software updates.
 - f) Updating code to accommodate update server software and browser updates.
 - g) Reviewing site content for errors, outdated content, broken links, non-optimized images, and inconsistencies.
 - h) Update widget code when provider code changes (Twitter, Facebook Pinterest, and other third party apps and feeds).
 - i) Providing guidance for content population best practices.
 - j) Testing video and other embedded content load speeds.
 - k) Performing website security update and security scan diagnostics.
 - l) Note: Maintenance and support contract time allotments can also be used for small additions of functionality and content as well as routine updates and edits to the website.
 - m) Make changes to the website as requested by the County Sheriff by email throughout each month with a 24-hour response time for text changes and

posting of documents.

B. The County will:

- 1) Timely respond to Contractor's inquiries and requests for information and provide timely feedback and response necessary to the Contractor's completion of the website.
- 2) Ensure that any logos, text, graphics, photos, designs, trademarks, or other artwork or depictions furnished to Contractor for inclusion on the website are owned by the County or not otherwise subject to intellectual property claims or suit by third parties.

2. COMPENSATION, INVOICING, AND SET-OFF

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

- 1) Contractor shall invoice the County monthly. Contractor's invoice will include a detailed status report indicating total hours worked and services provided in the previous month and describe project milestones achieved.
- 2) For graphic design services satisfactorily performed, the County shall pay to the Contractor a sum not to exceed \$3,000.00. After website launch, County will pay Contractor for monthly maintenance services provided at a rate of \$150.00 per month, for up to two hours of maintenance services provided by Contractor. Contractor will include on its invoices the annual and monthly fees for domain registration (\$15.00/year) and website hosting (\$30.00/month).
- 3) The total amount payable to the Contractor under this Agreement, inclusive of NMGRT shall not exceed \$5,175.00. Any NMGRT levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 4) 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. County will notify Contractor if and when County as paid Contractor the full not-to-exceed amount stated above prior to the expiration of the term of this Agreement. Absent an approved amendment increasing the not-to-exceed contract sum, Contractor will not be compensated in excess of the not-to-exceed amount stated above for deliverables and services performed. Fees or costs in excess of \$4,800.00 will not be charged by Contractor without the express prior written approval of the County.

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 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 and withhold unacceptable or disputed amounts. 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 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.

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 one year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of two additional years, on a year-to-year basis not to exceed a total of four years. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least 30 days prior to expiration of the term of the Agreement.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2 (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 written amendments to this Agreement.

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 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 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 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 requirements 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 are deliverables belonging to Santa Fe County. 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.

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 I (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. 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.

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 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.

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
Sheriff Office
35 Camino Justicia
Public Safety Complex
Santa Fe, New Mexico 87508

To the Contractor: Desert Elements Design, Inc.
Attention: Molly Duncan
410 Old Santa Fe Trail, Suite C
Santa Fe, New Mexico 87501

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. This Agreement and Contractor's obligation hereunder do not have any relationship with any of the Santa Fe County Commissioners, County Sheriff, employee of the County Sheriff, and no elected official within the State of New Mexico shall have any interest whatsoever, directly or indirectly, as an officer, stockholder, or employee or in any capacity with the Contractor.

25. FACSIMILE SIGNATURES

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

26. 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.

27. NO THIRD-PARTY BENEFICIARIES

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

28. 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. Non-hired vehicle insurance coverage will be required for employees, temporary employees, and subcontractor using their personal vehicle. The Contractor will also have an Employee Dishonesty endorsement with their General Liability. 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 Insurance. 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.

29. 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.

30. 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.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a

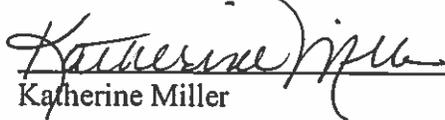
The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

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.

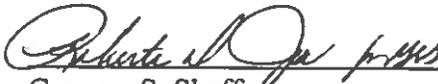
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:


Katherine Miller
Santa Fe County Manager

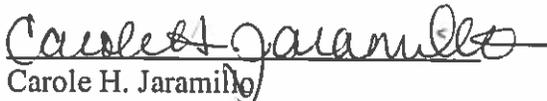
8.2.2016
Date

Approved as to form:


Gregory S. Shaffer
County Attorney

7-20-16
Date

Finance Department:


Carole H. Jaramillo
Finance Director

7/29/16
Date

Contractor:

Signature

Date

Title

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SANTA FE COUNTY:

Katherine Miller
Santa Fe County Manager

Date

Approved as to form:

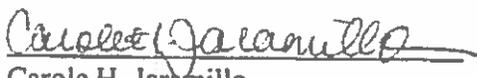


Gregory S. Shaffer
County Attorney

7-20-16

Date

Finance Department:



Carole H. Jaramillo
Finance Director

7/22/16

Date

Contractor: 

Digitally signed by
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1 August 2016

Date

Signature

President

Title

