PROFESSIONAL SERVICE AGREEMENT BETWEEN SANTA FE COUNTY AND FIRESTIK STUDIO TO DESIGN AND IMPLEMENT DWI PUBLIC AWARENESS CAMPAIGNS

THIS AGREEMENT is made and entered into this 31st day of March 2014, by and between **Santa Fe County**, hereinafter referred to as the "County" and **Firestik Studio**, whose principal place of business is located at 1012 Marquez Place #105, Santa Fe, N.M. 87505, hereinafter referred to as the "Contractor".

WHEREAS, the Santa Fe County Community Services Division, DWI Program, requires design services to develop and implement Public Awareness Campaigns that informs and instructs the public of the dangers of drinking and driving;

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. 2014-0237-HHS/PL, for the provision of these services;

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

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

The Contractor shall provide the creative development, design, production, copy writing, management and printing of the campaign promotional materials to include, but not limited to, the following:

A. Develop a strategy to rebrand and produce a new logo for the Santa Fe County DWI Program.

B. Develop two distinctly different Public Awareness campaigns in both English and Spanish for the Santa Fe County DWI Program to include:

1) Cab Ride Home Program;
2) Change to the County's Vehicle Forfeiture Ordinance;
3) Law Enforcement efforts to reduce DWI within Santa Fe County;
4) Public education on the dangers of drinking and driving.

C. Develop new, innovative tactics to promote the campaigns utilizing materials for distribution to restaurants and bars such as coasters, napkins, rack cards, Johnny Boards, magnets and key chains. Other promotional techniques could include bus wraps and advertising on gas pumps as well as other clever ideas.

D. Provide all copy writing, production, management, design, creative development, and printing of promotional materials.

E. Produce a designated number of coasters, key chains, bus wraps (King Kong wraps or others to include installation).

F. Produce and print direct mailing postcards to include cost of postage.

G. Develop and place digital media.

H. Provide support during public process including attendance at pre-arranged press conferences, social media updates and other collateral material.

The Santa Fe County DWI Program shall:

A. Provide direction and work closely with Contractor to ensure that all printed and produced materials are satisfactorily completed.

B. Develop a timeline with established deadlines for the timely delivery of all printed and produced materials.

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 written amendments to this Agreement.

3. COMPENSATION AND INVOICING

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 one hundred thirty thousand dollars ($130,000.00) inclusive of 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) years 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) years in one (1) year increments. In no event shall this Agreement exceed a term of four (4) years.

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.

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. 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 federal and 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: Firestik Studio
1012 Marquez Place #105
Santa Fe, New Mexico 87505

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. Contractor is registered as a sole proprietor under the laws of the State of New Mexico.

C. Contractor is legally registered and is properly licensed by the New Mexico State to do the work 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.

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. The County of Santa Fe 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. 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:

Katherine Miller

Katherine Miller
Santa Fe County Manager

3-31-14
Date

Approved as to Form

_____ 3/20/14
Stephen C. Ross Date
Santa Fe County Attorney

Finance Department Approval

_____ 3/20/14
Teresa C. Martinez Date
Santa Fe County Finance Director

CONTRACTOR:

_____ 3/18/14
(Signature) Date

ERIC GRIEGO
(Print Name)

OWNER
(Print Title)

FEDERAL IDENTIFICATION NUMBER: 043805132

EXHIBIT A

strategic thinking + design FIREST K STUDIO

March 25, 2014

BUDGET

SANTA FE COUNTY - 2 campaigns **Spring / Summer DWI Awareness Campaign**

The development of this design/advertising campaign consists of three focus areas to include: the *Cab Ride Home program*, the *Vehicle Forfeiture Ordinance* and *educating the public on the dangers of drinking and driving*. The primary target audience is English and Spanish speaking males, ages 21—35.

Spring Campaign

DESIGN / ACCOUNT MANAGEMENT

Logo development	$ 5,000.00
General account management	$ 5,000.00
Creation and development of campaign creative, headlines and taglines	$ 5,500.00
Copywriting and translating of print ads and collateral	$ 3,500.00
Design and production of agreed upon deliverables	$ 6,500.00
Photography	$ 1,500.00

PRINTING/COLLATERAL - may include but not limited to:

Posters 1,500, 11 X 17", 100# UV velvet cover 4cp/0	$ 2,750.00
Coasters 100,000 @ $0.0575 each / 4" x 4" or 3.5" x 3.5" square with round corners or 3.5" round, 60pt, 4cp/4cp	$ 8,750.00
Grocery Bags 1,000, 1 color - 75 gsm non-woven, 14"h x 16"w x 3"	$ 3,575.00
King Kong Bus Wraps 2 drivers side	$ 4,000.00

Bus Shelter Advertisements 6 locations - 36" x 36"	$ 1,500.00
ADVERTISING - may include but not limited to: Bus wraps, radio spots, statement stuffers online advertising, newspaper inserts, bus shelters	$ 15,000.00

Summer Campaign

DESIGN / ACCOUNT MANAGEMENT

General account management	$ 5,000.00
Creation and development of campaign creative, headlines and taglines	$ 5,500.00
Copywriting and translating of print ads and collateral	$ 3,500.00
Design and production of agreed upon deliverables	$ 6,500.00
Photography	$ 1,500.00

PRINTING/COLLATERAL - may include but not limited to:

Posters 1,500, 11 X 17", 100# UV velvet cover 4cp/0	$ 2,750.00
Coasters 100,000 @ $0.0575 each / 4" x 4" or 3.5" x 3.5" square with round corners or 3.5" round, 60pt, 4cp/4cp	$ 8,750.00
Grocery Bags 1,000, 1 color - 75 gsm non-woven, 14"h x 16"w x 3"	$ 3,575.00
King Kong Bus Wraps 2 drivers side	$ 4,000.00
Bus Shelter Advertisements 6 locations - 36" x 36"	$ 1,500.00
ADVERTISING - may include but not limited to: Bus wraps, radio spots, statement stuffers online advertising, newspaper inserts, bus shelters	$ 15,000.00

sub total:	$ 120,150.00
NMGR tax (8.1875%)	$ 9,837.29
Total:	**$ 129,987.29**

Timeline / Spring Campaign

Approval of Logo

selection of logo and tagline	4/14/14

Approval of Concept

present initial concept on agreed upon collateral material	4/18/14
approve final design for printing	4/20/14

Delivery of Approved Graphics

be ready to execute mailings, graphics etc.	5/02/14

Timeline / Summer Campaign

TBD