

# BUILDING SYSTEMS ANALYSIS SERVICES AGREEMENT

Project (short title): (School Name Here)  
(Short Title Here)

Agreement No:

Location: (City/Town, State)

Project No:



**Distribution to:**

- District Representative (original)
- Contractor (Original)
- PSFA Regional Manager (copy)
- PSFA Sr. Facilities Manager (copy)
- PSFA Contracts Administrator (copy)
- Other \_\_\_\_\_

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between

(NAME) SCHOOL DISTRICT  
(ADDRESS 1)  
(ADDRESS 2)  
(CITY/TOWN), NM (ZIP CODE)  
Telephone: (505) (PHONE)  
Fax: (505) (FAX NUMBER)

(NAME OF FIRM)  
(ADDRESS 1)  
(ADDRESS 2)  
(CITY/TOWN), NM (ZIP CODE)  
Telephone: (505) (PHONE)  
Fax: (505) (FAX NUMBER)  
Federal ID:  
CRS Number:

hereinafter "Owner"; and  
PSFA is a Co-Owner in this Agreement.

hereinafter "Contractor."

**PROJECT DESCRIPTION:**

*(FILL IN DESCRIPTION & LOCATION OF PROJECT HERE)*

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THIS AGREEMENT is made and entered into by and between the **School/District Name, Public School Facilities Authority**, hereinafter referred to as “Owner/Owners or Agency” and \_\_\_\_\_, hereinafter referred to as the "Contractor,” and is effective as set-forth below upon execution by both parties.

IT IS AGREED BETWEEN THE PARTIES:

This is a **Firm Fixed Price Agreement**.

The Contractor has the experience, organization, human resources, financial and technical ability to provide the work/services.

That the intent and purpose that this Agreement (inclusive of all associated pricing and services) is to establish an Agreement for Building Systems Analysis Services (herein-after referred to as the Services).

## **1.0 Scope of Work/Services, Duties & Responsibilities.**

The Contractor shall provide and perform evaluations of the overall facility condition by identifying components of the facility, hereafter referred to as building systems and overall site and facility configuration as it relates to life-safety. The Services shall be provided and performed as outlined in this Agreement, RFP # \_\_\_\_\_, and in accordance with the Terms, Conditions, Requirements, Specifications, Standards, and Services stated in the PSFA’s NM Public School Adequacy Planning Guide, The State of NM PSFA HVAC and Controls Performance Assurance Program, The State of NM Public School Facilities Authority Roofing Program Handbook, and such other services reasonably inferable, necessary for, or incidental to the performance of this Agreement.

The Contractor shall provide qualified personnel (*qualified by applicable education, knowledge, or experience*) skilled in performing Building Systems Analysis and preparing detailed and specific Reports. The Contractor’s Team shall have engineering expertise, be experienced and fully capable of performing the Services required under this Agreement for the assessments, verifications and analysis to examine relevant facility functional, operational, performance, systems, and architectural requirements.

### **A. Scope of Work Summary**

The Contractor shall provide and fully manage a qualified survey team to provide an evaluation, to create a Building Systems Analysis Report (BSAR) of the overall facility condition by identifying components of the facility, hereafter referred to as building systems, and overall site and facility configuration as it relates to life-safety.

The inspection/evaluation of a particular item may require limited invasive inspection that must be agreed upon with the Owner prior to any damage. The cost of any repair necessary for evaluation shall be, with prior approval, an additional cost borne by the Owners.

In the form of a study report, the BSAR will describe repair, or replacement; and an opinion of total project costs that would sufficiently correct building systems and other deficiencies so that the life of the facility would adequately support its intended purposes for 20 or more years.

The Contractor is to assume that the facility's current occupant capacity is adequate and that the facility must fully meet current building codes including handicapped accessibility, as well as abatement of any observable hazardous materials. If a building addition would be required, the study shall briefly describe, and include probable costs.

The BSAR shall include a photographic survey, a general narrative describing the building, adjacent roads, general site conditions and cost estimates shall conform to the UniFormat 2010 Level 2 structure. Sketches supporting the work identified for building renovation may be required.

The BSAR shall also include the date the inspection(s) were performed, a complete breakdown of all systems/components inspected, a determination that the inspected systems/components are or are not meeting required safe operational specifications, a listing of any systems/components not inspected and why, and (if appropriate) a recommendation for the repair/replacement of any systems/components that pose a risk to safe operational functions. (Note: *Any recommendations for the replacement of any systems/components shall include a description of the type deficiency that is impairing or may impair the systems or components from functioning in accordance with required specification; and a recommended time frame for the replacement or repair of the system or component.*)

**A.1 Expected level of analysis:**

**Code Analysis** – Provide complete facility survey by a New Mexico Licensed Architect identifying all life-safety requirements including construction type, egress routes, corridors, doors, and fire protection, as well as identify any ADA issues.

**Life-Safety** – Provide complete building survey by a New Mexico Licensed Architect identifying the type, age and condition of facility construction, fire protection, fire rated corridors/fire rated doors, and sprinkler system. Identify the location, type age and condition of the fire alarm panel, all smoke detectors, fire extinguishers and strobes. Identify all ADA and code violations; provide a statement of probable cost to repair versus replace to bring this system to code and to meet state adequacy standards.

**Educational Adequacy** – Provide a copy of the most current PSFA FAD report for the school.

**Structural** – Provide overall structural evaluation by a New Mexico Licensed Engineer that includes; footings/stem walls/slab/curtain wall/interior walls/bar joists/roof decking and any site drainage that could impact any of the above.

Evaluation shall include seismic and uplift considerations. Interview the district's maintenance department and include their comments in the BSAR.

**Overall Shell** – Provide overall inspection. Interview the district's maintenance department and include their comments in the BSAR.

**Roofing** – Provide a complete survey including age, type, condition, and roof core, if appropriate and agreed upon, approximately once every 5,000 sf. Provide inspection and analysis of roof drains (camera scope if necessary).

**Facility's Interior Surfaces** – Provide overall inspection. Interview the district's maintenance department and include their comments in the BSAR.

**Plumbing** – Provide an overall survey of water lines, sanitary sewer lines and storm sewer lines, identify type, age and condition of each and provide camera scope of all sanitary sewer lines from the manhole to the fixtures. Review district's FIMS, or other system in use, work orders on plumbing issues. Interview the district's maintenance department and include their comments in the BSAR.

**Mechanical**- Provide an overall survey that inspects and reports on the vents, hoods, HVAC equipment, air handling units, and controls. Review district's FIMS, or other system in use, work orders on mechanical issues. Interview the district's maintenance department and include their comments in the BSAR.

**Electrical** – Provide an overall survey that inspects and reports on the main and sub panels, age of panels and wiring, condition of panels and wiring, identify code violations related to panels and wiring. Review district's FIMS, or other system in use, work orders on mechanical issues. Estimate broadband pathways including wireless to be fully replaced – refer to the Owners guidelines. Interview the district's maintenance department and include their comments in the BSAR.

## **A.2 Deliverables**

The period of performance shall be ~~fourteen~~\_\_\_\_\_ (140) weeks from date of award/notice to proceed, which will be broken down into the following milestones:

1. The draft BSAR shall be submitted within ~~6~~\_\_\_\_\_ weeks of award. The Owners' Representatives will require 4 weeks to review the draft. Upon completion of the Owners' review if required by the Owners the Contractor shall meet on site to receive and review documents within one week after being notified by the Owners. All contractor personnel involved in inspection and report preparation process must attend the site meeting, unless otherwise agreed upon by both the Owners and the Contractor's Program Manager.

2. The contractor shall provide final BSAR report within ~~four~~ (40) weeks after the site meeting discussing the Owners' comments. The contractor shall provide two (2) hard copies of the final report and one electronic PDF copy.
3. Written Documents, including reports, cost estimates, and supporting data calculations shall be included in the final report. Organize the report in the order of scope as listed in Article A.1 supra; include an opening summary or overview.
4. If a task submittal fails to meet the requirements specified, it will be rejected by the Owners and the reasons therefore explained. The consultant shall revise and resubmit rejected submittals at no additional cost to the Owners.
5. Provide sketches or drawings as necessary bound in the report or as separate documents to illustrate building and site conditions or problems or to depict possible solutions.
6. Provide photographs as required to document building conditions and illustrate problems areas. Photos to be printed and bound as part of the building evaluation condition report.
7. Owner to provide the following if available; as built drawings or original plans and specifications, documented history of any facility problems or issues.

**B. Additional Requirements/Specification**

1. The Contractor shall provide all applicable/necessary personnel background security checks in accordance with state requirements of 22-10A-5.D NMSA 1978 regarding employees' having unsupervised access to students. Provide Certificates of Insurance for the Project before the commencement of the work. Each party shall comply with their respective obligations under applicable data protection legislation.
2. The Contractor will commence providing the Services upon issuance of 1) a confirming Purchase Order and 2) a written "Notice to Proceed" from the Owner(s).
3. Work/services provided under this Agreement will be performed at ~~Abiquiu Elementary School~~ \_\_\_\_\_ in ~~Española~~ \_\_\_\_\_, New Mexico and Contractor's Office locations between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time Monday through Friday, excluding Owner and Contractor holidays. Weekend (*Saturdays and Sundays*) and holiday services will not be required, and are not a part of this Agreement's requirements.
4. The Contractor will perform the Services in accordance with the applicable processes, procedures, specifications, and methodologies contained in and as required and specified in this Agreement and the RFP.
5. Contractor will provide/designate a Single-Point-Of-Contact (SPOC) Project Manager for all services/work to be performed and provided under this Agreement. The Project Manager will manage Contractor's responsibilities under this Agreement,

including the Contractor's project staff and project resources, participating in project status meeting, preparing/submitting project status reports, and performing such other activities necessary for the management, performance, and quality of the Contractor's obligations and requirement under this Agreement.

6. Contractor will initiate and participate in the Project Kick-off Meeting, and such other meeting(s) (*as deemed necessary*), for Services status updates. Contractor shall be responsible for documenting any findings, issues or determination of the meetings, and submitting such documentation to Owner for review, for written acceptance or rejection of all or portions of the document's contents.
7. Contractor will be responsible for, and ensure that all personnel participating in the Project are orientated in, and fully knowledgeable of all applicable processes, procedures, specifications, requirements, and methodologies necessary for successfully fulfilling the objective of this Agreement.
8. Good faith cooperation. Contractor acknowledges that successful completion of this project will require full and mutual good faith cooperation. Where agreement, approval, acceptance, consent or similar action is required by any provision of this statement of work, such action will not be unreasonably delayed or withheld.

Contractor represents and warrants that it has read the RFP, Scope of Work, and Requirements of this Agreement, has reviewed them carefully, is familiar with its terms, requirements, specifications, and can perform the Work under this Agreement in the time and for the compensation required hereunder. Contractor further represents and warrants that it is knowledgeable of all sites/locations where the Work is to be performed as it deems sufficient to inform itself of the conditions under which the Work is to be performed.

### **B.1 Additional Deliverables**

1. General Liability, Workers Compensation & Employers' Liability, and Automobile Liability Proof of Insurance
  2. Services Single-Point-Of-Contact Information
  3. Kickoff/Planning Meeting
  4. Documentation from Kickoff/Workshop Meeting
  5. Status/Routine Meetings Documentation
  6. Survey and Status Reports
  7. Field Investigation Plan
  8. Investigation/Inspection/Evaluation Phase – Draft Report
  9. Owner Handoff Phase – Final 100% Report
- a. All/Any services/deliverables, whether or not enumerated herein-above, which payment may be applicable shall be submitted via written documentation with, at minimum, the following information:
- i. The designation (name) of the service provided.
  - ii. The start and completion date of the service.
  - iii. The outcome/status of the service.

- iv. The identity of the Contractor Representative that performed/provided the service.
- b. Document deliverables will be reviewed in accordance with the criteria contained in this Agreement. (*see Article 2 herein-below*)
- c. All deliverable documentation created under this agreement will be submitted and available in electronic format, in Adobe PDF format and/or using the Microsoft Office suite.

### **C. Owner Assistance**

Owner shall provide/perform the following in support of the Contractor successfully completing the work/services required under this Agreement:

1. Owner will, in coordination with the Contractor, establish the on-site/off-site schedule of the Contractor team prior to the commencement of the Services.
2. Good faith cooperation. Owner acknowledges that successful completion of this project will require full and mutual good faith cooperation. Where agreement, approval, acceptance, consent or similar action is required by any provision of this statement of work, such action will not be unreasonably delayed or withheld.

## **2.0 Document Review Process**

If Contractor or Owner provides documentation as part of the Project, each project document will initially be developed in draft form. The Contractor or Owner may schedule working sessions, inclusive of Contractor personnel and PSFA/District personnel, to refine the draft document as it is written.

When the Contractor's draft document is complete, the Contractor's SPOC will submit the draft document to Owner Project Manager for review. Owner Project Manager will be responsible for distributing copies of the document for internal review by PSFA and the District. Owner Project Manager is responsible for consolidating Owner's comments and for providing a clearly marked version of the draft document to Contractor's SPOC. Owner Project Manager will have four (4) calendar weeks to review and return the consolidated comments to the Contractor SPOC, unless otherwise specified by the parties.

When Owner responds to a draft document, the Contractor, if required by the Owners, shall meet on site to review documents within one week after being notified by the Owners. All contractor personnel involved in inspection and report preparation process must attend the site meeting, unless otherwise agreed upon by both the Owners and the Contractor's Program Manager. The Contractor will review and evaluate Owner comments and respond to them in writing.

### **2.1 Extension of/or Additional Services**

Any services exceeding the scope of work and cost of this Agreement and the approved initial **Purchase Order**, shall be mutually agreed-to in advance by Owner and the Contractor, and shall be authorized by an approved **Amendment to this Agreement**



prior to the Contractor proceeding with any additional work. Amendments to the Proposal may form the basis of an additional **Purchase Order** to cover additional services, or in an amendment to the existing purchase order, depending on circumstances and approval by the Owner. It is the Contractor's responsibility to inform PSFA in advance and in a timely manner when it is anticipated that any additional services will require modifications due to changes in the work. Owner is not responsible for work performed without the proper documentation and an approved amended purchase document.

### 3.0 Compensation.

Owner shall pay to the Contractor in full payment, for Services and Deliverables satisfactorily performed and delivered, compensation in the **Firm-Fixed-Price** of \_\_\_\_\_ **Dollars & 00/100 (\$00,00.00), including New Mexico Gross Receipts Tax.**

The total **Firm-Fixed-Price** amount payable to the Contractor under this Agreement, including all applicable taxes shall not exceed \_\_\_\_\_ **Dollars & 00/100 (\$00,000.00)**. 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.

Contractor shall be responsible for paying any and all taxes levied on amounts payable under this Agreement for those taxes enumerated on Contractor invoices received by Owner and will be paid to taxing governmental agencies by Contractor with funds received from Owner for tax payment of said invoices.

If an applicable Governmental Authority Tax Rate changes, during the life of this Agreement, Owner shall amend this Agreement to cover government taxing authority's changes in applicable Tax Rates costs.

The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency 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 prior to those services in excess of the total compensation amount being provided.

A. **INVOICING:** Subject to the condition precedent set forth in this Agreement, Owner may make progress payments to Contractor on a monthly basis for the portion of the Work performed and completed in the preceding month in accordance with monthly invoices prepared by Contractor and as approved by Owner.

B. Contractor must submit detailed statements accounting for all services performed, goods obtained, resources used, and expenses incurred. Invoices must be supported by approved purchase order document and invoice by the supplier, evidencing the propriety of each claim for payment. All invoices shall be in accordance with and based on actual work/services performed and completed. If the Agency finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the

Contractor that payment is requested, and (ii) all supporting documentation, the Agency shall provide the Contractor a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Contractor may take to provide remedial action. Upon the Agency's certification that the statement, supporting documentation, services, goods or expenses have been received and accepted, Agency shall tender payment to the Contractor within 30 days after the date of acceptance. Acceptance will be deemed to have occurred NO LATER THAN THREE DAYS FROM THE INVOICE DATE. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Agency shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

#### 4.0 Term.

The period of performance will be ~~fourteen~~                      (140) weeks from date of award.

This Agreement becomes effective under the following conditions: 1) when executed by the authorized representatives of the Contractor and Owner, 2) upon issuance of aan Owner Purchase Order, and 3) upon issuance of a *Notice to Proceed* specifying the Commencement and Termination Date of the Agreement. It shall terminate on the date specified in the Notice to Proceed, unless earlier terminated pursuant to Paragraph 5, Termination, or Paragraph 6 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

#### 5.0 Termination/Suspension.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, Owner's sole liability upon such termination shall be to pay for work performed prior to the Contractor's receipt of the notice of termination, if Owner is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Owner or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT."

B. Termination Management. Immediately upon receipt by either the Owner or the Contractor of a written notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this

Agreement without written approval of the Owner; 2) comply with all directives issued by the Owner in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Owner shall direct for the protection, preservation, retention or transfer of all property titled to the Owner and [records generated under this Agreement] and any non-expendable personal property or equipment purchased by the Contractor with contract funds shall become property of the Owner upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Owner a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Owner agreements with the Contractor, if applicable; the property listed in the inventory report including any records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records.

C. Change Order Process for Termination or Suspension. Any terminations or suspensions will be processed in accordance with the Amendment, Changes and Termination Articles of this Agreement.

## **6.0 Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made in accordance with the Laws of the State of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice being given by the Owners to the Contractor. The Owners' decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Owners proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

## **7.0 Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

*Certification.* Contractor shall furnish to Owner(s), upon request, any certification required to be furnished by any provision of this Agreement or Order issued hereunder, including any clauses incorporated by reference herein, and any certificate required by this Agreement, any law, ordinance or regulation with respect to contractor's compliance with the terms and provisions of such law, ordinance, regulation, or this Agreement.

## **8.0 Subcontracting and Assignment.**

Contractor shall not subcontract any portion of the Work without the prior written approval of the Owner of the lower-tier subcontractor and the form, terms and conditions of the lower-tier subcontract. Contractor shall not assign this Contract, or any of its rights hereunder, without the prior written approval of the Owner and PSFA. No assignment or subcontracting, even with the Owner's and PSFA's approval, shall relieve Contractor of any obligations hereunder, or create any contractual relationship between such lower-tier subcontractor and the Owner or PSFA. Any lower-tier subcontractor shall assume unto Owner and PSFA all of the obligations of Contractor as they relate to such portion of the sublet Work.

## **9.0 Release.**

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of Owner, their officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

## **10.0 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 Agency.

Contractor shall be responsible for ensuring that all reports and analysis of any type which are developed by or communicated to Contractor or any of its affiliates in performing the Work and all information, oral, electronic or written, obtained by Contractor in connection with this Contract from the Owner shall not be disclosed unless prior written approval from the Owner is obtained. This obligation of Contractor shall survive the expiration, suspension, or termination of this Contract. This obligation of confidentiality shall not apply to information: (a) that is previously known, or available, to Contractor on an unrestricted and non-confidential basis; (b) that is, or becomes a part, of the public domain through a third party; (c) that is any obligation of confidentiality; or (d) that must be disclosed pursuant to legal requirements to which Contractor is subject if such disclosure is mandatory upon Contractor and failure to so disclose would subject Contractor to civil or criminal penalties.

## **11.0 Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Owner no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

## **12.0 Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services

required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee have been followed. OCI Attachment 2014 is attached to this Contract and is incorporated herein to the same extent as if it has been set out verbatim in this Article 12.

### **13.0 Amendments and Changes.**

This Agreement shall not be altered, changed or amended except by written Amendment executed by the parties hereto.

- a. Either Contractor or Owner may initiate a change request, in writing, to the Project for scope expansion, amendment or replacement. The change will be evaluated, and any Project impact will be identified. The price, scope, and schedule impact, if any, will be analyzed and clearly documented.
- b. Change Request will include a clear and complete description of the basis and reason for the change, the initiator of the change request, as well as impact to scope, price, quality, schedule, resources, and risks. All changes must be mutually agreed by the parties in writing. Once approved, changes to the initial project will be implemented as described.
- c. Owner may at any time, by written notice, and without in any way invalidating this Agreement, make changes within the general scope of this Agreement in any one or more of the following: (i) description of services to be performed; (ii) time of performance; (iii) places of performance of the services; (iv) drawings, designs or specifications; or (v) method of delivery or packaging of Deliverables.

If any change causes an increase or decrease in the fixed price, any hourly rate, travel expense, or the time required for performance of any part of the Work under this Agreement, or otherwise affects, directly or indirectly, any other terms and conditions of this Agreement, Owner will make an equitable adjustment in the price, performance schedule, or other affected terms and will amend the Agreement accordingly.

### **14.0 Force Majeure.**

Neither party will be liable for any delays resulting from circumstances beyond its reasonable control. In the event of any force majeure event, Contractor shall promptly notify Owner of the event that may cause delay and take all reasonable actions to mitigate the impact of the delay. In no event will a force majeure event excuse delays in performance not directly attributable to the event.

### **15.0 Merger.**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

## **16.0 Penalties for Violation of Law.**

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

## **17.0 Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

## **18.0 Governing Law and Venue.**

The laws of the State of New Mexico (without giving effect to its conflict of laws principles) govern all matters arising under this agreement, including all tort claims. The location for any arbitration or venue for any lawsuit arising out of this Agreement or the Work hereunder shall be Albuquerque, New Mexico or, at Owner's sole discretion, the location of the Project and all proceedings shall be strictly in accordance with the laws of the State of New Mexico. (*Reference: Section 38-3-1 (G) NMSA 1978*)

## **19.0 Worker's Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Owner.

## **20.0 Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor. The Owner shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive or illegal payments

## 21.0 Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) standard business days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

### 21.1 Insurance Requirements:

Prior to any work/services being performed under this agreement, the Contractor shall submit Contractor's proof of insurance via Certificate of Insurance.

The Contractor will, at its sole expense, secure and maintain and will file with the Owner, proper and acceptable evidence of the following described insurance, which coverage shall (1) be secured with an insurance company acceptable to Owner, (2) be issued as a primary policy not contributing with and not in excess of any primary and/or excess coverages carried by the Owner and (3) contain loss payable clauses satisfactory to the Owner for applicable coverages.

Such coverage shall be provided without interruption or lapse of any kind regardless of the reason for the same. Subcontractor shall ensure that the policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Owner shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or Contractor gives written notice to the Owner, whichever period is longer.

**i. Worker's Compensation Insurance and Employer's Liability Insurance.**

Worker's compensation insurance and employer's liability insurance in compliance with the laws of all applicable jurisdictions and any other coverages that may apply where the work is performed covering all employees engaged in the performance of the Work associated in this Agreement and any project hereunder, including coverage for Employer's Liability for:

- a. Bodily Injury by Accident - \$500,000 each accident
- b. Bodily Injury by Disease - \$500,000 each employee
- c. Bodily Injury by Disease - \$500,000 policy limit

**ii. Commercial Liability Insurance.** with minimum limits as follows:

- a. Each Occurrence Limit - \$1,000,000 combined single limit for bodily injury and property damage liability.
  - b. Med Expense (Any one person) - \$10,000.
  - c. Personal and advertising injury limit - \$1,000,000.
  - d. Products-Completed Operations Aggregate Limit - \$2,000,000
  - e. General Aggregate Limit (other than Products-Completed Operations) - \$2,000,000. This policy shall be endorsed to have the General Aggregate limit apply on a "per project basis".
- iii. **Automobile Liability Insurance.** Automobile liability insurance covering any auto (owned, non-owned and hired vehicles) with limits of not less than \$1,000,000 (each occurrence), for bodily injury (per person) not less than \$1,000,000, bodily injury (per accident) not less than \$1,000,000, and property damage liability resulting from any one accident not less than \$1,000,000.
  - iv. **Excess/Umbrella Liability Insurance.** Excess/Umbrella insurance in an amount not less than \$3,000,000 combined single limit for any one occurrence, and \$3,000,000 aggregate. This policy is to provide no less that the same coverage described in Paragraphs i, ii, and iii above, and is to be in excess of required primary limits of liability.
  - v. **Pollution Insurance** (*this policy shall be applicable only to services/work involving hazardous materials*).
  - vi. **Professional Liability Insurance.** Professional liability Insurance in an amount not less than \$1,000,000 per claim with a \$2,000,000 annual aggregate. Insurance will be maintained in force for a period of three (3) years after substantial completion of the project.
  - vii. All liability insurance shall insure performance by the Subcontractor of the indemnification provisions under Article 20 of the Agreement.
  - viii. The minimum policy limits required in this Article are exclusive of costs of defense. The Contractor's obligation to procure and maintain the insurance required in this Article 21.1, subparagraphs i-viii above is not in derogation of, nor in substitution for Contractor's obligation to protect, defend, indemnify and save Owners harmless under those provisions or under Article 21, it being understood that Contractor's obligation to protect, defend, indemnify and save the Owners harmless are not dependent upon nor limited to the amount or availability of insurance proceeds.
  - ix. **Additional Insured.** The Owner shall be listed as additional insured on the Contractor's policies for **all liability insurance, except worker compensation and professional liability**, required under the terms of this Agreement, and such liability insurance policies, including all primary policies and any excess/umbrella policies shall be primary to any primary and/or excess/umbrella liability insurance carried by the Owner.



- x. **Waiver of Subrogation.** All policies shall be endorsed to provide that underwriters and insurance companies of the Contractor shall not have any rights to subrogate against the Owner or the State of New Mexico.
- xi. **Certificates and Policies.** The Subcontractor shall furnish certificates of insurance evidencing compliance with the foregoing requirements, including the per project general aggregate, as a condition of initial prequalification as well as a condition of continued prequalification for the Contract period. Each Certificate will provide that:  
"All coverage provided by this certificate is primary and non-contributory."

**Premiums Responsibility.** All policies shall be endorsed to provide that there will be no recourse against the Owner for payment of the Contractor's premiums.

## 22.0 New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars, or

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars, or

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://www.hsd.state.nm.us/LookingForAssistance/centennial-care-overview.aspx>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the

Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

### **23.0 Invalid Term or Condition.**

If any provision of this Agreement is unenforceable to any extent, the remainder of this subcontract, or any application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

### **24.0 Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

### **25.0 Notices.**

Any notice required to be given to either party by this Agreement may initially be provided by E-mail, but shall be followed up 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 Owner:

To the Contractor:

**26.0 Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last executed by either party hereto as indicated below.**

By: \_\_\_\_\_  
Contractor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
District Representative

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Regional Manager

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Director - PSFA

Dated: \_\_\_\_\_

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

NM CRS Number: \_\_\_\_\_

# OCI Attachment 2014

## New Mexico Public School Facilities Authority

### ORGANIZATIONAL CONFLICTS OF INTEREST - SPECIAL CLAUSE (January 2014)

- (a) Purpose. The Public School Facilities Authority's (PSFA) primary purpose of this clause is to aid in ensuring that the Contractor (1) is not biased because of its past, present, or currently planned interests (financial, sub-contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, Contractor, cosponsor, joint venturer, consultant, or in any similar capacity.
- (i) The Contractor shall be ineligible to participate in any capacity in PSFA contracts, subcontracts, or proposals therefore (solicited or unsolicited) which stem directly from the Contractor's performance of work under this contract. Furthermore, unless so directed in writing by the PSFA Authorized Representative, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing
- (ii) If the Contractor under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by PSFA, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard commercial items to PSFA.
- (1) Access to and use of information.
- (i) If the Contractor, in the performance of this contract, obtains access to information, such as PSFA plans, policies, reports, studies, financial plans, confidential internal data, or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the PSFA it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the PSFA based on such information for a period of one (1) year after either the completion of this contract or until such information is released or otherwise made available to the public,

whichever is first; (c) submit an unsolicited proposal to PSFA which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the PSFA.

- (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by state or federal law, or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produced after the requirements of the instant subcontract have been met.

(c) Disclosure after award.

- (1) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to PSFA that shall include a description of the action, which the Contractor has taken or proposes to take to avoid or mitigate such conflicts.

PSFA may, however, terminate the contract for convenience if it deems such termination to be in the best interest of PSFA.

- (2) In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict, PSFA may terminate the contract for default.

(d) Lower-tier subcontracts.

- (1) The Contractor shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "subcontract", "Contractor" and "PSFA Authorized Representative" shall be appropriately modified to preserve the PSFA/Government's rights.
- (2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting or management support services work, the Contractor shall obtain for the PSFA a disclosure statement or representation from each intended Contractor or consultant. The Contractor shall not enter into any lower-tier subcontract nor engage any consultant unless the PSFA shall have first notified the Contractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of PSFA.

- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, PSFA may terminate the subcontract for default, disqualify the Contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.

- (f) Waiver. Requests for waiver under this clause shall be directed in writing to the PSFA and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of PSFA, the PSFA may grant such a waiver in writing.
- (g) Modifications. Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the subcontract are changed, PSFA will request and Contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

# ATTACHMENT A

## State of NM W-9

If you are already doing business with the State of NM, you may disregard this form.

If you are new to doing business in NM, you must fill out this form to be entered into the financial system for reporting and payment for GRT and payment of invoices.

(Note: State of NM W-9 Form is available on the PSFA web site at [www.nmpsfa.org](http://www.nmpsfa.org))

OR

You may contact the procurement manager for a copy of the Form in PDF Format