

APPENDIX B: SAMPLE AGREEMENT



NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY

1312 Basehart SE # 200, Albuquerque, NM 87106 • (505) 843-6272 • <https://www.nmpsfa.org/>

ON-CALL LEGAL SERVICES CONTRACT # **PSFA2023-XX**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Public School Facilities Authority, hereinafter referred to as the “PSFA,” and **[Name of Company]**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below.

WHEREAS, the PSFA issued a Request for Proposals, titled “On-Call Legal Services” (RFP);

WHEREAS, the RFP, Addenda and the Proposal submitted by Contractor are incorporated by reference and made a part of this Agreement by way of reference;

WHEREAS, the Contractor has the experience, technical ability and is fully licensed to provide On-Call Legal services in conformity with the laws of the State of New Mexico;

WHEREAS, this Agreement shall be utilized by the PSFA on an as-needed-basis.

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

- A. For each Project, the Contractor shall provide and perform all necessary, required, services specified in the Contractor’s accepted and approved Quote in conformance with the services listed at Exhibit A of this Agreement.
- B. Contractor shall submit a proposal for each Project on the established Quote Form hereto attached as **Appendix No. 1.**
- C. A purchase order will be assigned for each Project.

2. Compensation.

- A. The Contractor shall be compensated in full payment for services satisfactorily performed for completion of set deliverables as set forth in the accepted and approved Quote in conformance with the rates established at **Exhibit B.**
- B. Payment shall be made upon acceptance of each deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice.

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- C. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of acceptance.
- D. The Contractor shall be reimbursed for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification Number. Contractor and all subcontractors shall pay all Federal, state and local taxes Applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold OWNER AND CO-OWNER harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- E. The Contractor shall be reimbursed for allowed travel expenses herein defined in **Exhibit B**. Itemized receipts are required as expense documentation for all reimbursements. If an itemized receipt is not submitted as the expense documentation, reimbursement for that purchase will not be given. Lump sum receipts will not be accepted. Allowed billable travel expenses shall not exceed the State of New Mexico's current allowable travel and per diem limits; NMAC 2.42.2.8.A-B.
- F. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached in the approved and accepted quote. Contractor is responsible for notifying the PSFA when the services provided under the quote reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without an amendment to the quote.

3. **Term.**

This Agreement shall become effective when signed by the PSFA and shall terminate on **[date]** unless terminated pursuant by the Termination and Appropriations provisions of this Agreement. The PSFA reserves the right to renew the Agreement through a written amendment signed by all required signatories, but in this case, the Agreement shall not exceed the total number of years allowed pursuant to Section 13-1-50 NMSA 1978.

4. **Termination.**

- A. **Grounds.** The PSFA may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the PSFA's uncured, material breach of this Agreement.
- B. **Notice; PSFA Opportunity to Cure.**

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- 1) Except as otherwise provided in Paragraph (4)(B)(3), the PSFA shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
 - 2) Contractor shall give PSFA written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the PSFA's material breaches of this Agreement upon which the termination is based and (ii) state what the PSFA must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the PSFA does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the PSFA does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
 - 3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the PSFA; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.
- C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the PSFA's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PSFA'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*
- D. Termination Management. Immediately upon receipt by either the PSFA or the Contractor of 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 PSFA;
 - 2) comply with all directives issued by the PSFA in the notice of termination as to the performance of work under this Agreement; and
 - 3) take such action as the PSFA shall direct for the protection, preservation, retention or transfer of all property titled to the PSFA and records generated under this Agreement.

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Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the PSFA upon termination and shall be submitted to the PSFA as soon as practicable.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the PSFA to the Contractor. The PSFA's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the PSFA 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.

6. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the PSFA 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.

7. **Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the PSFA.

8. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the PSFA. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring PSFA.

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the PSFA, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

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10. 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 PSFA.

11. 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 PSFA 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. Conflict of Interest; Governmental Conduct Act.

- A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, 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.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any PSFA employee while such employee was or is employed by the PSFA and participating directly or indirectly in the PSFA's contracting process;
 - 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
 - 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of

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the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the PSFA's making this Agreement;

- 4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
 - 5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
 - 6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the PSFA.
- C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the PSFA relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the PSFA if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the PSFA and notwithstanding anything in the Agreement to the contrary, the PSFA may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. **Amendment.**

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

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- B. If the PSFA proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. **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.

15. **Penalties for Violation of Law.**

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

16. **Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

17. **Workers 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 PSFA.

18. **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 PSFA, the General Services Department/State Purchasing Division and the State Auditor. The PSFA shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the PSFA to recover excessive or illegal payments

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19. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless the PSFA 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, servants, 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, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the PSFA and the Risk Management Division of the New Mexico General Services Department by certified mail.

20. **Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

21. **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.

22. **Insurance.**

A. Prior to any work/services to be performed for any Project under this agreement, the Contractor shall provide the PSFA and Co-Owner with a Certificate of Insurance acceptable to the PSFA for the following described insurance coverages. The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance. The Insurance shall be written on an occurrence basis. The PSFA shall be listed as additional insured on the Contractor's policies. The Certificates of Insurance shall contain provisions that coverages afforded under the policies will not be canceled or allowed to expire until at least forty-five (45) days prior written notice has been given to the PSFA.

- 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

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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: \$100,000 each accident
- b. Bodily Injury by Disease: \$100,000 each employee
- ii. **Comprehensive General Liability Insurance**, including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability, for all liability the Contractor will assume under the awarded Agreement. Limits shall not be less than the following:
 - a. Bodily Injury: \$1,000,000 per person / \$1,000,000 per occurrence.
 - b. Property Damage or combined single limit coverage: \$1,000,000.
 - c. Personal and advertising injury limit: \$1,000,000.
- iii. **Professional Liability Insurance**. The Contractor shall provide and maintain Professional Liability Insurance with one million dollar limit (\$1,000,000) and shall be maintained in full force and effect at all times during the performance of Project.
- iv. **Liability Insurance**. The Contractor shall maintain insurance that shall protect the Contractor from claims set forth below, which may arise out of or result from operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by anyone directly or indirectly employed, or by anyone for whose acts may be liable:
 - a. Claims under Workers' Compensation, Disability Benefit and other similar Employee Benefit Acts, which are applicable to the Work to be performed;
 - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
 - c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- B. The Contractor will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.
- C. All policies shall be endorsed to provide that the underwriters and insurance companies of the Contractor shall not have any right so subrogate against the PFSA, Co-Owner or the State of New Mexico.

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:

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To the PSFA:

Hieu Cruz, Contract Administrator
New Mexico Public School Facilities Authority
1312 Basehart Rd., SE Suite 200
Albuquerque, New Mexico 87106
Telephone: 505-468-0261
hcruz@nmpsfa.org

To the Contractor:

Contact Name:
Company Name:
Address:
City, State, Zip:
Telephone:
Email address:

24. 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.

25. Equitable Remedies

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the PSFA irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the PSFA, and the Contractor consents to the PSFA's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The PSFA's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that PSFA may have under applicable law, including, but not limited to, monetary damages.

26. 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.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the Contractor and PSFA signature below.

By: _____ Date: _____
Contractor Representative
Title
Company Name

By: _____ Date: _____
Martica Casias
PSFA Executive Director
New Mexico Public School Facilities Authority (PSFA)

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.

Contractor NM Tax ID Number: _____

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SAMPLE AGREEMENT: EXHIBIT A

Scope of Work

Will be inserted here in executed Agreement

SAMPLE

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SAMPLE AGREEMENT: EXHIBIT B

Rate Schedule

Will be inserted here in executed Agreement

SAMPLE

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SAMPLE AGREEMENT: APPENDIX 1

Quote Form

Will be inserted here in executed Agreement

SAMPLE

End of Sample Agreement