STATE OF NEW MEXICO
PUBLIC SCHOOL FACILITIES AUTHORITY
1312 Basehart SE # 200, Albuquerque, NM 87106 • (505) 843-6272 • https://www.nmpsfa.org/

Architectural and/or Engineering Services

Request for Proposals

RFP No. RFP#2023-004

DEADLINE FOR RECEIPT OF PROPOSALS:
Date: 2/14/2023
Time: 2:00 P.M. local time

MANDATORY PRE-PROPOSAL CONFERENCE:
Date: 1/26/2023
Time: 1:00 P.M. local time
Location: Farmington Municipal Schools – Central Office and 3 School Site Visits
3401 E. 30th St., Ste. A
Farmington, NM 87402

VIRTUAL PRE-PROPOSAL CONFERENCE VIA GOTOMEETING DETAILS (IF APPLICABLE):

No Virtual Meeting – In Person Attendance Only

PSFA Project No: Farmington – Preschool Academy East (K23-001), Farmington – Heights Middle School (P23-004), and Farmington Mesa Verde Elementary School (P23-005)

Commodity Codes: 90607, 90638, 90735, 90738

RFP SCHEDULE OVERVIEW

RFP No. RFP#2023-004

3 New School Replacements: 1. Farmington – Preschool Academy East; 2. Farmington – Heights Middle School (P23-004), and Farmington Mesa Verde Elementary School (P23-005)

RFP Section	Action	Responsible Party	Date & Time
2.2.1.	RFP Issued	District	1/22/2023
2.2.2.	Acknowledgment of Receipt (Appendix No. 1) Due	Offerors	1/26/2023
2.2.3	Pre-proposal Conference/Site Visit – Choose one. Virtual Meeting Access Code: see Cover Page	District, Offerors	1/26/2023, 1:00 P.M.local time
2.2.4.	Deadline for Written Questions	Offerors	2/1/2023
2.2.5.	Response to Written Questions	District	2/6/2023
2.2.6.	Final RFP Addendum/Amendment Deadline	District	2/8/2023
2.2.7.	Submission of Proposal	Offerors	2/14/2023, 2:00 PM. local time
2.2.8.	Proposal Evaluation	Evaluation Committee	TBD
2.2.9.	Selection of Finalist or Short-Listed Finalists and Notice to Short-List Finalists	Evaluation Committee	TBD
2.2.10.	Finalist Presentation/Interview, if required	Offeror	TBD
2.2.11.	Notification of Intent to Award	District	TBD
2.2.12.	Contract Negotiations	District, Offeror	TBD
2.2.13.	Contract Approval Period	District, Offeror	TBD
2.2.14.	Contract Award	District	TBD
2.2.15.	Right to Protest Deadline	Offeror	TBD

RFP Procurement Manager Contact Information

Name	Lisa Evans
Telephone Number	505.324.9840 Ext. 1518
Email Address	levans@fms.k12.nm.us

Any inquiries or requests regarding clarification of this RFP document shall be submitted in writing to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding the terminology stated in the procurement documents.

RFP Proposal Submittal Location

Physical Address For Walk-in Delivery	**USPS Mailing Address Including Carrier Delivery, (UPS, FedEx, etc.)**
Farmington Municipal Schools 3401 E. 30th St., Ste. A Farmington, NM 87402	Farmington Municipal Schools 3401 E. 30th St., Ste. A Farmington, NM 87402

Ensure that the following information is clearly labeled on the **sealed package** containing the proposal. **Please note: if the sealed bid is placed inside a carrier envelope, package or box for shipping, all of this information must be re-written and clearly visible on the outermost envelope or package containing the sealed proposal: (1) Offeror's Business Name (not an individual's name), (2) the RFP number and Title, (3) RFP Due Date and Time.**

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1. INTRODUCTION

1.1. PURPOSE OF THE REQUEST FOR PROPOSAL

The Farmington Municipal Schools (District) is requesting proposals from qualified firms to perform architectural and/or engineering design services using the design-bid-build method in connection with the Farmington - Preschool Academy East, Farmington – Heights Middle School, and Farmington – Mesa Verde Elementary School for the District more particularly described at Exhibit 1.

1.1.1. The District is the lead in this procurement process with assistance and part ownership of the Project belonging to the PSFA. The District and PSFA are separately the District and PSFA and jointly will be referred to as Owner or Owners.

1.1.2. The District is located at the Northwest corner of the State of New Mexico. The district is comprised of 20 separate schools throughout the city of Farmington, NM with a combined facility size of over 1,500,000 square feet. The district presently has 2 preschools, 10 elementary schools, 4 middle schools, and 4 high schools and serves a significant diverse population. .

1.2. SCOPE OF PROCUREMENT

1.2.1. The Owners intend to issue one contract to the selected Offeror for the Project for a term of no more than four (4) years.

1.3. PROCUREMENT MANAGER

1.3.1. The District has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, email address, telephone number and mailing address are listed below. All deliveries via express carrier should be addressed as follows:

Lisa Evans, CPO
-
Farmington Municipal Schools
3401 E. 30th St., Ste. A
Farmington, NM 87402
levans@fms.k12.nm.us
505.324.9840

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact **ONLY** the Procurement Manager regarding the procurement. Other District employees or Evaluation Committee members do not have the authority to respond on behalf of the District.

1.4. DEFINITION OF TERMINOLOGY

1.4.1. This section contains definitions and abbreviations that are used throughout this procurement document.

"75% Complete" is when the construction documents (working drawings and specifications) are complete and ready to bid, and have received formal approval and acceptance by the owner.

"ASHRAE" is the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

"Addendum" or "Amendment" means a written change, addition, alteration, correction, or revision to an Invitation to Bid, Request for Proposal, or contract document.

"Adequacy and Planning Guide" means the reference guide to be used in the programming and design of school projects. The purpose of this guide is to clarify the "Adequacy Standards" and to provide assistance through references and "best Practice" examples.

"Adequacy Standards" means the New Mexico Public School Statewide Adequacy Standards, which establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility's size.

"Architect" means a New Mexico licensed architect and who is responsible for the architectural services.

"Agreement" means the agreement between the District, PSFA and the firm for the work covered by this solicitation.

"Authorized Purchaser" means an individual authorized by a Participating Entity to place orders against this contract.

"Award" means the final execution of the contract document resulting from this solicitation.

"Business Hours" means 8:00 AM to 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the given date.

"Close of Business" means 5:00 PM Mountain Standard Time or Mountain Daylight Time, whichever is in effect on the given date.

"Confidential" means confidential financial information concerning Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978, § 57-3-A-1 to § 57-3A-7. See NMAC § 1.4.1.25. As one example, no information that could be obtained from a source outside this solicitation can be considered confidential information.

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

"Construction Information Management System" or "CIMS" means an interactive software management system utilized by the PSFA and District to communicate with all necessary parties, obtain and register all necessary approvals, track the Project budget and

expenditures, as well as serving as a document repository for contracts, purchase orders, etc., throughout the Project lifecycle

"Consultant" means any business having a service contract with a state agency or local public body.

"Cost Reimbursement" means a contract which provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

"Design Professional" means the entity defined as an architect and or engineer, or the firm of architects, engineers, or both (and their consultants), which have undertaken to design the Project pursuant to a contract agreement with the Owner.

"Desirable" The terms "may", "can", "should", "preferable", or "refers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

"Determination" means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

"District" means the School District.

"Electronic Version/Copy" means a digital form consisting of text, images, or both, readable on computers or other electronic devices that includes all content that the Original, Hard Copy proposals or bids contain. The digital form may be submitted using a compact disc (CD) or USB flash drive. The electronic version/copy can NOT be emailed.

"Energy Star" is a voluntary program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy that identifies energy-efficient products and buildings. Qualified products and buildings exceed minimum Federal standards for energy consumption by a certain amount. Qualifying buildings which achieve an ENERGY STAR rating of 75 or above are eligible to receive the ENERGY STAR label. (See: http://www.energystar.gov) Compliance with ENERGY STAR is required on certain projects pursuant to NMSA 1978, § 15-3-36.

"Engineer" means a New Mexico licensed engineer and is responsible for the engineering services.

"Evaluation Committee" means a body appointed by the Owner to perform the evaluation of the proposals.

"Evaluation Committee Report" means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the solicitation.

"Finalist" is defined as an Offeror who meets all the mandatory specifications of this Request for Proposal and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Firm Fixed Price Contract" means a contract which has a fixed total price or fixed unit price.

"Hourly Rate" means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

"Local Public Works" means a project of a local public body that uses architectural or engineering services requiring professional services costing Fifty Thousand dollars ($50,000) or more or landscape architectural or surveying services requiring professional services costing Ten Thousand dollars ($10,000) or more, excluding applicable state and local gross receipts taxes.

"MACC" means the maximum allowable construction cost, which is the total sum available for construction purposes, including furnishings and equipment, but excluding professional fees, owner's contingency funds, acquisition costs, and other costs which are the responsibility of the Owner.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required" identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.

"Minor Technical Irregularities" means anything in the proposal that does not affect the price, quality, and quantity, or any other mandatory requirement.

"Multiple Source Award" means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property, or construction to more than one Offeror.

"Native American Resident Business Preference" means a business that has a valid Native American resident business certificate issued by the New Mexico Taxation and Revenue Department pursuant to §13-1-21 NMSA 1978 as amended.

"Native American Resident Veteran Business Preference" means a business that has a valid Native American resident veteran business certificate issued by the New Mexico Taxation and Revenue Department pursuant to §13-1-21 NMSA 1978 as amended.

"New Mexico Public School Facilities Authority" or "PSFA" is a statutorily created agency pursuant to NMSA 1978, § 22-24-9 which serves as staff to the Public School Capital Outlay Council.

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

"Procurement Manager" means any person or designee authorized by the District to enter into or administer contracts and make written determinations with respect thereto.

"Project" means the total administration, design, construction and post-construction of which work performed under this Agreement and the Construction Documents may be the whole or a part and which may include design or construction by the Owner or by separate professionals or contractors.

"Proposal" means an Offeror's written offer or response to a Request for Proposal.

"Public School Capital Outlay Council" or "PSCOC" the entity which distributes funds from the Public Outlay Fund to school districts throughout the State of New Mexico as prescribed by NMSA 1978, § 22-24-1 through § 22-24-6.

"Redacted" means a version/copy of the proposal with the information considered confidential as defined by NMAC 1978, § 1.4.1.45 and defined herein and outlined in Section 2.3.8. of this RFP, blacked out BUT NOT omitted or removed.

"Request for Proposal" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Resident Business Preference" means a business that has a valid resident business certificate issued by the New Mexico Taxation and Revenue Department pursuant to §13-1-22 NMSA 1978.

"Resident Veteran Business Preference" means a business that has a valid resident veteran business certificate issued by the New Mexico Taxation and Revenue Department pursuant to §13-1-22 NMSA 1978.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer which confirms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity, or delivery requirements.

"Sealed" means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed, and clearly labeled on the outermost package as directed in the RFP instructions. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The Owner reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

"Staff" means any individual who is a full-time, part-time, or an independently contracted employee with the Offeror's company.

"State (the State)" means the State of New Mexico.

"State Agency" or "Agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative or judicial branch of the government of

this State. “State Agency” or “Agency” includes the New Mexico Public School Facilities Authority.

“Statement of Concurrence” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirements. This statement shall be included in Offeror’s proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable”, etc.)

“Unredacted” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential; such copy for use only for the purpose of evaluation.

“Written” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

1.5. DOCUMENT LIBRARY

1.5.1. A document library has been established for Offerors to review. The library contains the information listed below and the content of each item can be located on the PSFA website at https://www.nmpsfa.org/wordpress/document-library-for-rfps/ (NMPSFA Homepage > Administration > Procurement > Document Library for RFP’s).

1.5.1.1. Guidelines to the New Mexico Public School Adequacy Standards:

- NMAC 6.27.30 Statewide Adequacy Standards
- NMAC 6.27.31 Special Purpose Schools Adequacy Planning Guide
- NMAC Rules – Public School Capital Outlay Council (NMAC 6.27.1 & 6.27.2
- Facilities Master Plan Scope of Work Checklist
- Facilities Master Plan Scope of Work Checklist (Charter Schools)

1.5.1.2. The State of New Mexico PSFA HVAC and Controls Performance Assurance Program Manual

1.5.1.3. The State of New Mexico PSFA TAB Performance Assurance Contractor Manual

1.5.1.4. The State of New Mexico PSFA Roofing Program Handbook

1.5.1.5. Division 07 Thermal and Moisture Protection (inclusive of all specification / requirements)

2. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP describes the major procurement events as defined in the RFP Schedule Overview, and the conditions governing the procurement. The Procurement Manager will make every effort to adhere to the RFP schedule.

2.1. SEQUENCE OF EVENTS

2.1.1. See RFP Schedule Overview, page 2. All dates are subject to change. The District will make every effort to adhere to the original schedule. All Offerors will be notified of any schedule changes via email as long as they have submitted the Acknowledgment of Receipt Form to be included on the procurement distribution list.

2.2. EXPLANATION OF EVENTS

2.2.1. RFP Issued

2.2.1.1. The date identified in the Notice of Publication in which the RFP document becomes available to the potential Offerors.

2.2.2. Acknowledgement of Receipt Form (Appendix No. 1)

2.2.2.1. Potential Offerors may hand deliver or return by mail or email, the Acknowledgment of Receipt Form, Appendix 1, included in this document, in order to have their organization placed on the procurement distribution list. The form should be returned as soon as possible to ensure inclusion on all RFP related correspondence and notices.

2.2.2.2. The procurement distribution list will be used for the distribution of written responses to questions and any RFP Addendums/Amendments.

2.2.2.3. Failure to return this form may cause you to be removed from the distribution list and thereby precluding you from receiving pertinent notifications such as addenda and or amendments to the RFP.

2.2.3. Mandatory Pre-Proposal Conference/Site Visit

2.2.3.1. A pre-proposal conference and site visit will be held commencing at the Farmington Municipal Schools Central office at 1:00 P.M. local time on 26 January 2023 in order to discuss the RFP documents and process. Subsequent to the meeting at the central office a site visit will be conducted of the three schools that are the focus of this RFP. These schools will be visited as follows. 1. Farmington Preschool Academy East at 5840 Fortuna Drive, Farmington, NM 87402. 2. Heights Middle School at 3700 College Blvd. 87402. 3. Mesa Verde Elementary School at 3801 College Blvd. 87402 .

Site visits will be conducted sequentially as listed above with no specific time for each visit. There will be no questions answered during the site visit. All questions must be placed in writing and submitted by 1 February 2023 per the requirements outlined previously.

2.2.3.2. Attendance at the pre-proposal conference is **mandatory and is a prerequisite for submission of a proposal.**

2.2.3.3. This section left intentionally blank.

2.2.3.4. Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager. The identity of the organization submitting the question(s) will not be revealed. Additional written questions may also be submitted at the conference and after, up to the Written Question Submission deadline. All written questions received prior to the conference will be addressed at the conference.

2.2.3.5. A public log will be kept of the names of potential Offerors that attend the pre-proposal conference.

2.2.4. Deadline to Submit Additional Written Questions

2.2.4.1. Potential Offerors may submit additional written questions as to the intent or clarification of this RFP until close of business on 2/1/2023. All written questions must be addressed to and sent to the Procurement Manager (see Section 1, Paragraph 1.3.1).

2.2.5. Response to Written Questions - RFP Addendum/Amendment(s)

2.2.5.1. Written responses to written questions and any RFP amendments will be distributed on 2/6/2023 to all potential Offerors whose organization name appears on the procurement distribution list.

2.2.5.2. Additional written requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than one (1) day after the answers and/or amendments were issued.

2.2.6. Final RFP Addendum/Amendment Deadline

2.2.6.1. The District will not publish any additional addendum/amendments after this deadline.

2.2.7. Submission of Proposal

2.2.7.1. Proposals shall be submitted to the District in both hard copy and electronic formats. (See Section 3. Response Format and Organization for further details.) Proposals must be addressed and delivered to the Procurement Manager at the address listed on the RFP Schedule Overview, page 4. Proposals must be sealed and clearly labeled on the outside of the package with the following information: (1) Offeror's business name, (2) RFP No. RFP#2023-004, (3) Title: Architectural and/or Engineering Services, and (4) RFP due date and time: 2/14/2023, 2:00 P.M. local time. Proposals submitted by facsimile or email will not be accepted.

2.2.7.2. **ALL OFFEROR PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2/14/2023,**

2:00 P.M. local time. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal.

2.2.7.3. A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of the proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to the Request for Proposal. Awarded in this context means the final required state agency signature on the contract(s), resulting from the procurement, has been obtained.

2.2.8. Proposal Evaluation

2.2.8.1. The evaluation of the proposals will be performed by the Evaluation Committee. Proposals will be evaluated based on the evaluation criteria outlined in Section 5, Proposal Evaluation, of this RFP. The process will begin with a preliminary review to determine compliance with mandatory requirements of the RFP. Contents of all proposals shall be kept confidential throughout the evaluation process. During this time, the Evaluation Committee may initiate discussions with the Offerors who submitted responsive or potentially responsive Proposals for the purpose of clarifying aspects of the Proposals, but Proposals may be accepted and evaluated without such meeting or discussion. Discussions shall not be initiated by Offerors after submissions or the selections of the top ranking Offeror(s) by the Evaluation Committee.

2.2.9. Selection of Finalist or Short-Listed Finalists and Notice to Short-List Finalists

2.2.9.1. The Evaluation Committee will select, and the Procurement Manager will notify the finalist(s). Only finalist(s) will be invited to participate in the subsequent steps of the procurement. The schedule for the Finalist Presentation/Interview will be determined at that time.

2.2.10. Interview of Finalists/Presentations (if applicable)

2.2.10.1. The Procurement Manager will schedule the time and location for each presentation. Finalists will be notified of the presentation time allowance when the interview is scheduled.

2.2.11. Notification of Intent to Award

2.2.11.1. The Procurement Manager shall prepare a procurement report and a recommendation to the Board for award of the project.

2.2.12. Contract Negotiations

2.2.12.1. Negotiations with the Finalist will be conducted. In accordance with Section 13-1-122 NMSA 1978 final fees are determined during the contract negotiations and depend on such factors such as project size and complexity as related to the approved Architect Rate Schedule 1.5.18 NMAC. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the District reserves the right to finalize a contractual agreement with the next most

advantageous Offeror(s) without undertaking a new procurement process. The District will conclude negotiations with the selected Offeror and begin negotiations with the next ranked Offeror based on final ranking.

2.2.13. Contract Approval Period

2.2.13.1. The time period in which all approval and final signatures are obtained from all of the parties to the contract.

2.2.14. Contract Award

2.2.14.1. The contract shall be awarded to the Offeror or Offerors whose proposal is most advantageous, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points.

2.2.14.2. Single or Multi-Award. The District reserves the right to issue multi-award contracts as necessary for adequate delivery of service in accordance with NMSA 1978, Section 13-1-153.

2.2.15. Right to Protest

2.2.15.1. Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposal, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposal. The fifteen (15) calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 PM Local Time on the fifteenth (15th) day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest, including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. Emailed protests are not allowed. The protest must be mailed or hand delivered to:

Lisa Evans, Chief Procurement Officer
3401 E. 30th St., Ste. A
Farmington, NM 87402

2.3. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with NMSA 1978, Chapter 13.

2.3.1. Acceptance of Conditions Governing the Procurement

2.3.1.1. Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section 5 of this RFP.

2.3.2. Incurring Cost

2.3.2.1. Any cost incurred by the potential Offeror in preparation, transmittal and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for setup and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

2.3.3. Prime Contractor Responsibility

2.3.3.1. Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement which may derive from this RFP. The District entering into a contractual agreement with a vendor will make payments to only the prime contractor.

2.3.4. Consultants/Subcontractors Consent

2.3.4.1. The use of consultants/subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement, whether or not subcontractors are used. Additionally, the prime contractor must receive written approval from the District awarding any resultant contract before any subcontractor is used during the term of this agreement.

2.3.5. Certifications and Licenses

2.3.5.1. Potential Offerors must have the proper, non-expired, certifications and licenses to do business in New Mexico as follows:

2.3.5.1.1. Corporations:

2.3.5.1.1.1. File Articles of Incorporation with the Secretary of State's Office and record with the County pursuant to NMSA 1978, § 53-4-6.
2.3.5.1.1.2. Name of registered agent pursuant to NMSA 1978, § 53-5-2.
2.3.5.1.1.3. Certificate of Authority from the Secretary of State's Office indicating that the corporation is authorized to conduct business in New Mexico pursuant to NMSA 1978, § 53-17-6 and § 53-17-8.
2.3.5.1.1.4. Obtain a Federal Employer Identification Number.
2.3.5.1.1.5. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

2.3.5.1.2. Limited Liability Companies:

2.3.5.1.2.1. Registered office and registered agent for service of process that is either a New Mexico resident or domestic corporation, limited liability company, or partnership that is located in New Mexico.
2.3.5.1.2.2. File and Application for Registration with the Secretary of State's Office to conduct business in New Mexico and must obtain a Certificate of Good Standing from the Secretary of State's Office to conduct business in New Mexico.
2.3.5.1.2.3. Obtain a Federal Employer Identification Number.
2.3.5.1.2.4. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

2.3.5.1.3. Limited Partnerships:

2.3.5.1.3.1. Apply for Certificate of Registration with the New Mexico Secretary of State pursuant to NMSA 1978, § 54-2-1 through § 54-2-48.

2.3.5.1.3.2. File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, § 54-1A-101 through § 54-1A-1206.

2.3.5.1.3.3. Obtain a Federal Employer Identification Number.

2.3.5.1.3.4. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

2.3.5.1.4. General Partnerships:

2.3.5.1.4.1. File a Statement of Partnership Authority with the Secretary of State pursuant to NMSA 1978, § 54-1A-101 through § 54-1A-1206.

2.3.5.1.4.2. Obtain a Federal Employer Tax Identification Number.

2.3.5.1.4.3. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

2.3.5.1.5. Sole Proprietorships and Joint Ventures:

2.3.5.1.5.1. Obtain a Federal Employer Identification Number.

2.3.5.1.5.2. Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

2.3.6. Amended Proposals

2.3.6.1. An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be replacements for a previously submitted proposal and must be clearly identified as such in the Letter of Transmittal. The District will not merge, collate, or assemble proposal materials.

2.3.7. Offeror's Rights to Withdraw Proposal

2.3.7.1. Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

2.3.8. Disclosure of Proposal Contents

2.3.8.1. Proposals will be kept confidential until negotiations and the award are completed by the District. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements: Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

2.3.8.2. Confidential data is restricted to confidential financial information concerning the Offeror's organization; and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, § 57-3A-1 to § 57-3A-7.

2.3.8.3. **PLEASE NOTE**: The price of products offered, or the cost of services proposed shall not be designated as proprietary or confidential information.

2.3.8.4. If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the District shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

2.3.9. No Obligation

2.3.9.1. This RFP in no manner obligates the Owners to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

2.3.10. Termination

2.3.10.1. This RFP may be cancelled at any time. Any and all proposals may be rejected in whole or in part when the Procurement Manager determines such action to be in the best interest of the Owners.

2.3.11. Sufficient Appropriation

2.3.11.1. Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be affected by sending written notice to the Contractor. Owner's decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

2.3.12. Legal Review

2.3.12.1. The Owners require that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

2.3.13. Governing Law

2.3.13.1. This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

2.3.14. Prohibited Bidding

2.3.14.1. Pursuant to NMSA 1978, § 10-16-13, no state agency or political subdivision of the State shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications, or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a State agency or political subdivision of this State shall exercise due diligence to ensure compliance with this section.

2.3.15. Consent to Jurisdiction and Venue

2.3.15.1. If a recipient of this RFP chooses to offer a proposal, the Offeror understands and agrees that by submitting such proposal to the District, they thereby consent to and agree to the exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from the contract selection and/or approval process in response to this RFP, or any dispute arising under or resulting from the performance of any contract resulting from this RFP, which cannot be resolved informally. The Offeror, by submitting such proposal, waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Offeror. By submitting such proposal, the Offeror agrees and consents that the Eleventh Judicial District Court - McKinley and San Juan Counties shall have venue and jurisdiction over all matters arising or derived from this RFP.

2.3.16. Basis for Proposal

2.3.16.1. Only information supplied, in writing, by the District through the Procurement Manager or in this RFP should be used as the basis for the preparation of the Offeror's proposal.

2.3.17. Contract Terms and Conditions

2.3.17.1. The contract between the Owners and the contracting firm will follow the format specified by the PSFA and shall contain the terms and conditions set forth in the Sample Agreement, Exhibit No. 2. Exceptions to the Sample Agreement my cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Evaluation Committee or the Owner, the proposed changes are substantial modification to the Sample Contract. The Owners reserve the right to negotiate provisions in addition to those contained in this RFP (Sample Agreement) with any Offeror.

2.3.17.2. Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Agreement the Offeror must propose specific alternative language. The Offeror must provide a brief description of the purpose and impact of each proposed change followed by the specific proposed alternate wording. The Owners may or may not accept the alternative language.

2.3.17.3. If an Offeror fails to propose any alternate terms and conditions in its proposal, no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions in the proposal is an explicit agreement by the Offeror that the contractual terms and conditions contained in the Sample Agreement are accepted by the Offeror.

2.3.17.4. A substitution of the Sample Contract is not acceptable and will result in the disqualification of the Offeror's proposal.

2.3.18. Offeror Qualifications

2.3.18.1. The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and § 13-1-85.

2.3.19. Right to Waive Minor Irregularities

2.3.19.1. The Evaluations Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

2.3.20. Change in Contractor Representatives

2.3.20.1. The District reserves the right to require a change in contractor representatives if the assigned representative(s) is not, in the opinion of the District, adequately meeting the needs of the District.

2.3.21. Notice of Penalties

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

2.3.22. District Rights

2.3.22.1. The District, in agreement with the Evaluation Committee, reserves the right to accept all or a portion of a potential Offeror's proposal.

2.3.23. Right to Publish

2.3.23.1. Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the District written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or District contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

2.3.24. Ownership of Proposals

2.3.24.1. All documents submitted in response to this Request for Proposal shall become the property of the District.

2.3.25. Confidentiality

2.3.25.1. Any confidential information provided to or developed by the contractor in the performance of the contract resulting from this RFP 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 Owners.

2.3.25.2. The contractor agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the Owner's written permission.

2.3.26. Electronic Mail Address Required

2.3.26.1. A large part of the communication regarding this procurement will be conducted by electronic mail (email). Offeror must have a valid email address to receive this correspondence.

2.3.27. Use of Electronic Versions of this RFP

2.3.27.1. This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the District, the version maintained by the District shall govern.

2.3.28. Disclosure of Campaign Contributions, Appendix No. 7

2.3.28.1. Offeror must complete, sign, date and return the Campaign Contribution Disclosure Form, Appendix No. 7, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or note made for the positions of Governor and Lieutenant Governor. Failure to complete and return the signed and dated, unaltered form will result in disqualification.

2.3.29. Disclosure Regarding Responsibility

2.3.29.1. Any prospective contractor and any of its principals who enter into a contract greater than Sixty Thousand dollars and zero cents ($60,000.00) with any state agency or local public body for professional services, tangible personal property, services, or construction, agrees to disclose whether the contractor or any principal of the contractor's company:

2.3.29.1.1. Is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any Federal entity, state agency, or local public body.

2.3.29.1.2. Has within a three (3) year period preceding this offer, been convicted in a criminal matter or had a civil judgement rendered against them for:

2.3.29.1.2.1. The commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract.

2.3.29.1.2.2. Violation of Federal or state anti-trust statutes related to the submission of offers; or

2.3.29.1.2.3. The commission in any Federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, violation, or Federal criminal tax law, or receiving stolen property.

2.3.29.1.3. Is presently indicted for, or otherwise criminally or civilly charged by any (Federal, state, or local) government entity with the commission of any of the offenses enumerated in paragraph 2.3.30.1.1., and paragraph and subparagraphs of 2.3.30.2. of this disclosure.

2.3.29.1.4. Has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds Three Thousand dollars and zero cents ($3,000.00)

of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.

2.3.29.1.4.1. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

2.3.29.1.4.2. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

2.3.29.1.4.3. Have within a three (3) year period preceding this offer, had one or more contracts terminated for default by any Federal or state agency or local public body.

2.3.29.2. Principal, for purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

2.3.29.3. The Contractor shall provide immediate written notice to the District or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

2.3.29.4. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

2.3.29.5. Nothing contained in the forgoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

2.3.29.6. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If, during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (Federal, state or local) with commission of any offenses named in this document, the Contractor must provide immediate written notice to the District or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the District or Central Purchasing Officer may terminate the involved contract for cause. Still further, the District or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the District or Central Purchasing Officer.

2.3.30. New Mexico Preferences

2.3.30.1. To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a valid copy of their preference certificate with their proposal. Invalid or expired certificates will not be accepted. An expired certificate currently in the process of renewal will not be considered valid. Certificates for preferences must be obtained through the New Mexico Department of Taxation and Revenue: http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx

2.3.30.2. New Mexico preferences are: the New Mexico Resident Business Preference, the New Mexico Native American Resident Business Preference, the New Mexico Resident Veteran Business Preference, and the New Mexico Native American Veteran Business Preference.

2.3.30.3. **An Offeror cannot be awarded multiple preferences.** The District shall award a business only one of the following preferences: New Mexico Resident Business Preference, New Mexico Native American Resident Business Preference, New Mexico Resident Veteran Business Preference, and New Mexico Native American Veteran Business Preference.

2.3.30.4. The New Mexico preferences shall not apply when the expenditures for this RFP include Federal Funds.

2.3.31. Conflict of Interest: Government Conduct Act

2.3.31.1. The Offeror 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.

2.3.31.2. The Offeror certifies that the requirements of the Governmental Conduct Act, NMSA 1978, § 10-16-1 through § 10-16-18, regarding contracting with a public officer or state employee, or former state employee, have been followed.

2.3.32. Equal Employment Opportunity

2.3.32.1. In connection with this RFP and the Contract, Offeror shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference.

2.3.32.2. Offeror shall take affirmative action to ensure that all applicants are treated fairly during employment, without regard to race, color, religion sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference.

2.3.32.3. Such action shall include but not be limited to the following: layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2.3.33. Financial Responsibility

2.3.33.1. Proposals must certify as to the financial viability and resources of the Offeror to complete the proposed activities within the period of performance. The Owners reserve the right to request and review the latest financial statements and audit reports as part of the basis of the award.

3. RESPONSE FORMAT AND ORGANIZATION

3.1. NUMBER OF RESPONSES PER OFFEROR

3.1.1. Offerors shall submit only one (1) proposal in response to this RFP.

3.2. NUMBER OF COPIES OF SUBMITTED PROPOSAL

3.2.1. Offeror shall submit its proposal in hard copy and electronic formats in the quantities specified.

3.2.2. There must be **one (1)** original hard copy of the complete proposal with original signatures, clearly labeled **ORIGINAL** along with the RFP number, RFP Title and Offeror's business name.

3.2.3. Offerors must submit **eight (8)** USB flash drives, each containing a copy of the original proposal. Each USB flash drive must be clearly labeled with the RFP number and the Offeror's business name either with a label on the flash drive or with an ID tag. **One (1)** of the USB flash drives is to also be labeled ORIGINAL, and will be kept with the hard copy proposal.

3.2.4. Offeror must deliver their sealed proposal submission per the instructions on the RFP Schedule Overview and in Section 2, paragraph 2.2.6, on or before the closing date and time for receipt of proposals.

3.2.5. **Emailed and/or faxed submissions will not be accepted.**

3.3. PROPOSAL FORMAT (Hard Copy and Electronic Copy)

3.3.1. Proposals must be submitted in two formats: one (1) hard copy in a three-ring binder, clearly labeled **ORIGINAL** and electronic copies on USB flash drives as specified in paragraph 3.2.3.

3.3.2. Spreadsheets and charts can be in Excel format. If the Excel files are password protected on the electronic copies, the password must be provided in written form with the USB flash drives. All USB flash drives must be clearly labeled with the RFP number and the Offeror's business name.

3.3.3. **One (1)** electronic copy must contain an exact copy of the hard copy proposal in PDF and Excel formats as applicable and be labeled ORIGINAL.

3.3.4. The hard copy proposal must be typewritten on standard 8 ½ x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.), with tabs delineating each section as specified in 3.3.4.1., and placed in as small a three-ring binder as needed to contain the proposal. Spiral or comb binding is not acceptable. Offerors are strongly encouraged to limit their

proposals to a maximum of thirty (30) pages. Exclusions to this limitation will be all of the items required in Tab 1 as paragraph in 3.3.4.1.

3.3.4.1. Proposal Organization

3.3.4.1.1. Proposals shall be divided into three (3) clearly defined sections (i.e. tabs) and shall follow the exact ordering listed below:

- **Tab 1 - Required Items – Failure to include any of these items may result in your proposal being deemed non-responsive:**
  - Appendix No. 2 - RFP Submission Checklist Form
  - Appendix No. 3 - Required Information Form
  - Appendix No. 4 - Letter of Transmittal Form
  - Appendix No. 5 - Acknowledgment of Scope of Work Form
  - Appendix No. 6 - Conflict Of Interest, Non-Collusion and Debarment/Suspension Certification Form
  - Appendix No. 7 - Campaign Contribution Disclosure Form
  - Appendix No. 8 - Acknowledgment of Receipt of Addenda/Amendments Form
  - Valid Preference Certificate for one of the following: NM Resident Business Certificate, Native American Resident Business Certificate, Resident Veteran Business Certificate, or Native American Resident Veteran Business Certificate
  - Certificate of Liability Insurance
  - New Mexico Secretary of State Certificate of Organization
  - Current W-9
  - Any additionally required documents not included in the page count

- **Tab 2 – Mandatory Items - Response to Evaluation Criteria (maximum thirty (30) pages):**
  - Section 4.1.1.1. - Specialized Design and Technical Competence
  - Section 4.1.1.2. - Capacity and Capability to Perform Work
  - Section 4.1.1.3. - Past Record of Performance
  - Section 4.1.1.4. - Proximity to or Familiarity with Site Location(s)
  - Section 4.1.1.5. - New Mexico Produced Work
  - Section 4.1.1.6. - Volume of Work (Table 1 and Table 2 in Attachment No. 1) – See 5.1.3. for further instructions

- **Tab 3 – Non-Mandatory Items:**
  - Additional non-scored, non-required, informational items such as promotional documents, current professional licenses/certificates and resumes.

3.3.4.1.2. The items required under Tab 1 will not be included in the thirty (30) page limit.

3.3.4.1.3. Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Offerors may attach other materials that they feel may improve the

quality of their response. However, these materials should be included as items in a separate appendix. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

4. SPECIFICATIONS AND OTHER REQUIREMENTS

4.1. MANDATORY SPECIFICATIONS

4.1.1. Offerors shall respond in the form of a thorough narrative to each mandatory specification requiring such. Each specification shall be clearly delineated with a cover sheet. The narratives, along with required supporting materials, will be evaluated and awarded points accordingly. Failure to address mandatory specifications/requirements, or provide the mandatory forms, will deem your proposal as non-responsive.

4.1.1.1. Specialized Design and Technical Competence

4.1.1.1.1. Offerors must describe or provide a work plan to perform the services required by the project scope.

4.1.1.1.2. Describe your firm's specialized problem solving techniques or approaches, innovative practices/ideas, and advantages your team brings or offers to the project.

4.1.1.1.3. Provide a bar chart schedule and describe all work proposed to fulfill the project scope.

4.1.1.2. Capacity and Capability of the Offeror to Perform the Work

4.1.1.2.1. Offeror's must provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements.

4.1.1.2.2. Provide information that demonstrates your firm's ability to perform the services required for this project.

4.1.1.2.3. Include an organizational chart indicating key project team members, including any consultants, and their specific roles on the project and/or area(s) of expertise.

4.1.1.2.4. Clearly identify the lead design professional/engineer who will be directly responsible for the project.

4.1.1.2.5. Include in the organizational chart the percentage of time each team member will spend or commit to providing services toward the project.

4.1.1.2.6. Provide brief resumes for the lead engineer and key project team members, describing why each team member was selected for this project, highlighting relevant project experience and knowledge.

4.1.1.2.7. Indicate if a subcontractor/consultant is affiliated with the prime contractor as an affiliated company, firm, or business. Also identify the firms or teams list of current projects.

4.1.1.3. Past Record of Performance

4.1.1.3.1. Offeror's must demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs.

4.1.1.3.2. Project schedules should provide information about the progress of work as related to owner schedules and goals, as well as the overall success of projects and client satisfaction.

4.1.1.3.3. Describe three to five (3-5) past projects, specifying their relevance to the current project. Provide the following for each project: project title and location, the year the project's professional services were completed and the year the project construction was completed. Include the project manager's name, years of experience, years with your firm, education (degree or specialization), present position/job title, current professional registration number including State and Discipline, other professional qualifications.

4.1.1.3.4. Request the completion of the Reference Questionnaire in Attachment No. 2 from each of the three to five (3-5) businesses referenced in 4.1.1.3.3., following the Reference Questionnaire submission instructions in Attachment No. 2. On the above projects, provide the client references, including contact names, addresses, email address and telephone numbers for each project.

4.1.1.4. Proximity to or Familiarity with Site Location

4.1.1.4.1. Offerors must identify your familiarity with the project area and your understanding of the project scope.

4.1.1.4.2. Offerors must demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for architectural/engineering services and administration of the project.

4.1.1.4.3. Indicate previous knowledge or experience regarding the project location, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to project needs

4.1.1.5. New Mexico Produced Work (Does not apply to federally funded projects)

4.1.1.5.1. It is in the District's best interest to support in-state businesses.

4.1.1.5.2. Indicate the volume of work to be produced in New Mexico by a New Mexico firm or firms.

4.1.1.5.3. Identify any out of-state consultant(s) or business relationships that will be involved on the project and the extent of services to be provided by that firm or firms.

4.1.1.6. Volume of Work Currently Being Performed

4.1.1.6.1. Complete the tables in Attachment No. 1 Project/Contract Listing Form and see Section 5, Evaluation 5.1.3 Volume of Work, for information regarding the point deduction formula.

4.2. REQUIRED ITEMS AND FORMS

These requirements are mandatory and shall be included under Tab 1 of the Offeror's RFP submission. Failure to include any of these items may render a proposal as non-responsive.

4.2.1. RFP Submission Checklist Form ("Appendix No. 2")

4.2.1.1. Offerors shall submit a completed RFP Submission Checklist Form with its proposal.

4.2.2. Required Information Form ("Appendix No. 3")
Offerors shall respond in the form of a thorough narrative to each mandatory specification listed below, requiring such. The narratives along with required supporting materials will be evaluated and awarded points accordingly. Failure to address mandatory specifications/requirements, or provide the mandatory forms, will deem your proposal non-responsive.

4.2.2.1. The Principal member or officer of the firm who will be responsible for the administration of the contract, including their email address and telephone number;

4.2.2.2. Identify the business name, address, and telephone number of the office(s) where the work will be performed for the prime Offeror and all sub-consultants;

4.2.2.3. Indicate the type of firm: corporation, partnership, sole proprietor, joint venture or other;

4.2.2.4. State the year the firm was established, and any former names by which the firm was known;

4.2.2.5. Provide the names and registration numbers of the New Mexico Registered Professional Architect/Engineer who will be in direct responsible charge of the work, including their email address and telephone number;

4.2.2.6. Indicate whether or not the individual registration has ever been subject to disciplinary action by the Board of Examiners for Architects. If yes, include an explanation;

4.2.2.7. List all applicable business licenses your firm holds that are required by the State of New Mexico, including the license number and jurisdiction and the name of license holder exactly as it appears on file.

4.2.3. Letter of Transmittal Form ("Appendix No. 4")

4.2.3.1. Offerors shall submit a completed Letter of Transmittal Form with its proposal.

4.2.4. Acknowledgment of Scope of Work Form ("Appendix No. 5")

4.2.4.1. Offerors shall submit a completed Acknowledgment of Scope of Work Form with its proposal.

4.2.5. Conflict Of Interest, Non-Collusion and Debarment/Suspension Certification Form ("Appendix No. 6")

4.2.5.1. Offerors shall submit a completed Conflict Of Interest, Non-Collusion and Debarment/Suspension Certification Form with its proposal.

4.2.6. Campaign Contribution Disclosure Form ("Appendix No. 7")

4.2.6.1. Offerors shall submit a completed Campaign Contribution Disclosure Form with its proposal.

4.2.7. Acknowledgment of Receipt of Addenda/Amendments Form ("Appendix No. 8")

4.2.7.1. Offerors shall submit a completed Acknowledgment of Receipt of Addenda/Amendments Form with its proposal.

4.2.8. Preferences: New Mexico Resident Business Preference, Native American Resident Business Preference, New Mexico Resident Veteran Business Preference, or Native American Resident Veteran Business Preference. (Does not Apply to Federally Funded Projects)

4.2.8.1. If you do not qualify for one of the Preferences listed in paragraph 4.2.8., please provide a statement in this section of your proposal, stating you do not qualify. If you do not qualify for any of the preferences, your proposal will be accepted, however you will not receive points for a preference.

4.2.9. Certificate of Liability Insurance

4.2.9.1. Contractor shall maintain the following insurance for the term of an awarded Agreement, and the District and PSFA shall be named as additional insureds. The Contractor will provide for thirty (30) days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

4.2.9.2. Workers Compensation (including accident and disease coverage) at the statutory limit. Employer's liability: One Hundred Thousand dollars ($100,000). Comprehensive general liability (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:

4.2.9.2.1. Bodily injury: One Million dollars ($1,000,000) per person / One Million dollars ($1,000,000) per occurrence.

4.2.9.2.2. Property damage or combined single limit coverage: One Million dollars ($1,000,000)

4.2.9.2.3. Automobile liability (including non-owned automobile coverage): One Million dollars ($1,000,000)

4.2.9.2.4. Umbrella: One Million dollars ($1,000,000)

4.2.10. New Mexico Secretary of State Certificate of Organization

4.2.10.1. Offerors must provide a copy of a current, un-expired, Certificate of Organization with the New Mexico Secretary of State's office at the time of submission. Offerors must also be in good standing and compliance.

4.2.11. Current W-9

4.2.11.1. Offeror must include a current W-9 form; completed, signed, and dated. The form is available on the IRS website: https://www.irs.gov/forms-pubs/about-form-w-9

4.2.11.2. The State of New Mexico Substitute W-9 form is available on the NMPSFA website at: https://www.nmpsfa.org/wordpress/wp-content/uploads/2020/05/NM_SUBSTITUTE_W-9-1.pdf

4.3. OTHER REQUIREMENTS

These requirements are non-mandatory. Failure to include these items will not render a proposal as non-responsive.

4.3.1. Sample Contract Response

4.3.1.1. See Section 2.3.17., Contract Terms and Conditions, for further information.

5. EVALUATION

5.1. EVALUATION FACTORS/POINTS

5.1.1. The District will evaluate responsive proposals and assign a score in each category, not to exceed the maximum allowed score for that category, as determined through the Offeror's attention to the criteria detailed in the following sections. The amount of discussion to be applied to each listed topic is an individual choice of the Offeror, however, discussion should be detailed enough to inform and educate the evaluators.

5.1.2. Proposals will be scored based upon comparison of the information submitted by each Offeror against the evaluation criteria outlined below.

RFP SECTION	EVALUATION FACTORS	POINTS AVAILABLE
4.1.1.1.	Specialized Design and Technical Competence	15 Points
4.1.1.2.	Capacity and Capability to Perform Work	20 Points
4.1.1.3.	Past Record of Performance	25 Points
4.1.1.4.	Proximity to or Familiarity with Site Location(s)	20 Points
4.1.1.5.	New Mexico Produced Work	15 Points
4.1.1.6.	Volume of Work (Attachment No. 1 - Table 1 and Table 2)	5 Points
Total Maximum Allowable Evaluation Factor Points		**100 POINTS**
4.1.4.	New Mexico Resident Business Preference or Native American Resident Business Preference, if applicable.	8 Points
4.1.4.	New Mexico Resident Veteran Business Preference or Native American Resident Veteran Business Preference, if applicable	10 Points
	Finalist Interview, if applicable	50 Points
	Total Points Possible:	**100 – 160 POINTS**

5.1.3. The **Volume of Work** point deducting formula in the table below will be used for projects previously performed for the District which are not 75% complete. Total used for this calculation are the combined total from Attachment No. 1: Table 1 and Table 2.

Combined Total Fees	**Points Deducted**
Less than Seventy-Five Thousand dollars ($75,000)	0 Points
Seventy-Five Thousand dollars ($75,000) to Ninety-Nine Thousand Nine Hundred Ninety-Nine dollars and Ninety-Nine cents ($99,999.99)	1 Point
One Hundred Thousand dollars ($100,000) to One Hundred Forty-Nine Thousand Nine Hundred Ninety-Nine dollars and Ninety-Nine cents ($149,999.99)	2 Points
One Hundred Fifty Thousand dollars ($150,000) to One Hundred Ninety-Nine Thousand Nine Hundred Ninety-Nine dollars and Ninety-Nine cents ($199,999.99)	3 Points
Two Hundred Thousand dollars ($200,000) to Two Hundred Forty-Nine Thousand Nine Hundred Ninety-Nine dollars and Ninety-Nine cents ($249,999.99)	4 Points
Two Hundred Fifty Thousand dollars ($250,000) or more	5 Points

5.2. EVALUATION PROCESS

5.2.1. The evaluations process will follow the five steps listed below:

5.2.1.1. All Offeror proposals will be reviewed for compliance with the mandatory specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

5.2.1.2. The Procurement Manager may contact the Offeror for clarification of the response, as specified in paragraph 2.2.8.1.

5.2.1.3. The Evaluation Committee may use other sources of information to perform the evaluation.

5.2.1.4. Responsive proposals will be evaluated on the factors in Section 5 that have been assigned a point value. The responsible Offeror(s) whose proposal is most advantageous to the District, taking into consideration the evaluation factors in Section 5 and successful negotiations, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score. In the event of oral presentations, responsible Offerors with the highest scores resulting from the written evaluations will be selected as finalist Offerors.

5.2.1.4. Points awarded from the oral presentations will be added to the previously assigned points from the written evaluations to attain final scores.

5.2.1.5. Ties in ranking shall be scored using the sum of the ranking places, divided by the number of firms in a tie. The following is an example of scoring for a first-place tie:

Scoring		Numerical Ranking		
Firm A	Tie	$(1^{st} + 2^{nd}/2)$	=	1.5
Firm B	Tie	$(1^{st} + 2^{nd}/2)$	=	1.5
Firm C	3rd		=	3

A tie for first, at the end of the final rankings after the completion of short listing and interviews, shall be broken by a separate ranking by the committee members, only ranking the firms involved in the tie. If a tie still exists after ranking only the tied firms, the tie shall be broken by the Procurement Manager.

EXHIBIT 1: SCOPE OF WORK

1. PROJECT DESCRIPTION

The projects consist of the replacement of three schools. These are Farmington Academy Preschool East, Heights Middle School and Mesa Verde Elementary School. The design and construction of these three projects will proceed sequentially when funding becomes available from either state funds or district funds. The construction phase of all three projects will utilize the CMAR method. Details of these projects are as follows:

A. Farmington Preschool Academy East. A proposed facility of 51,929 square feet that will accommodate 720 full time preschool students is to be designed and construced. This facility will be constructed on the existing site with a determination yet to be made as to whether the existing facility will continue in operation as the new facility is contructed or whether a demolition of the existing facility commence prior to the construction of the new facility.
B. Heights Middle School. A proposed facility of 89,001 square feet that will accommodate 680 full time students is to be designed and constructed. This facility will be constructed on the existing site while the present school remains in operation. At the conclusion of construction of the new facility, students from Mesa Verde Elementary School will occupy the existing Heights Middle School while demolition of the existing Mesa Verde Elementary School takes place and construction of the new Mesa Verde Elementary School commences and concludes. After constuction of the new Mesa Verde Elementary School and site improvements are completed and students occupy the new facility then demolition of the existing Heights Middle School will be completed and the new sports fields will be completed.
C. Mesa Verde Elementary School: A proposed new facility of 58,159 Square Feet that will accommodate 447 students is to be designed and constructed. As explained above in the Heights Middle School project descritiption students will move into the existing Heights Middle School at the completion of construction of the new Heights Middle School facility. They will be in class there until the demolition of the old Mesa Verde Elementary School is completed and a new Mesa Verde Elementary School and site improvements are completed.

2. TOTAL PROJECT COST

The total estimated cost of each of the three projects is as follows:

A. Farmington Preschool Academy East: $27,003,080.00. This amount includes all direct and indirect costs and not just the MACC.
B. Heights Middle School: $26,280,520.00. This amount includes all direct and indirect costs and not just the MACC.
C. Mesa Verde Elementary School: $28,352,510.00. This amount includes all direct and indirect costs and not just the MACC.

3. DESIGN PROJECT SCHEDULE

The project schedules are as follows. Please note that these are the maximum allowable times for each phase and do not include an optimum time frame. All efforts must be made to improve upon these dates as much as is practically possible and a proposed schedule from the offerors will be considered in the proposal. Please keep in mind that funding for these projects mandates that they be constructed sequentially as construction funding becomes available. The sequence of construction is as follows: Farmington Academy Preschool East will commence construction upon approval by the PSCOC with the funds being made available at that time. Heights Middle

School will then commence design after construction funding for the Farmington Academy Preschool East is received with the construction of Heights Middle School commencing upon approval by the PSCOC and those construction funds being made available. Finally, Mesa Verde Elementary School will commence design after construction funding for the Heights Middle School is received with the construction of Mesa Verde Elementary School commencing upon approval by the PSCOC and those construction funds being made available. The following schedules represent the maximum allowable completion time for each phase of each project:

A. Farmington Academy Preschool East:
   i. Project Planning – 06.30.2023
   ii. Design Development – 06.30.2024
   iii. Construction – 01.30.2026
   iv. Final Completion – 01.30.2027
   v. Project Closeout – 08.01.2026
B. Heights Middle School
   i. Project Planning – 06.30.2023
   ii. Design Development – 06.30.2025
   iii. Construction – 01.30.2027
   iv. Final Completion – 01.30.2028
   v. Project Closeout – 08.01.2027
C. Mesa Verde Elementary School
   i. Project Planning – 06.30.2023
   ii. Design Development – 01.30.2027
   iii. Construction – 10.31.2028
   iv. Final Completion – 10.31.2029
   v. Project Closeout – 06.30.2029

4. PROJECT REQUIREMENTS

4.1 The successful Offeror for this RFP shall provide design and/or architectural services as specified below, which shall include, but not be limited to, programming (site selection and onsite investigation), schematic design, design development, construction documents, bidding, construction administration, and eleven (11) month Warranty Inspection services to ensure that all statutory requirements have been met. Designs may be required to meet and exceed EnergyStar building standards.

4.2 Phase Reviews.

4.2.1 Unless waived by the PSFA, all design phases shall be submitted to and approved by the Owner and the PSFA as part of the Request for Approval of School Construction (RASC) process, prior to proceeding to next appropriate phase: Program Statement, Schematic Design, Design Development and final or Construction Documents. Each design phase PSFA-RASC submittal application shall be approved and signed by the District's representative prior to submission to the PSFA. If the PSCOC funds are a part of project budget, then the PSFA regional manager approval and signature will also be required.

4.2.2 Plan reviews by other authorities having jurisdiction listed in this Subparagraph will be coordinated by the PSFA as part of each PSFA-RASC submission. The PSFA will

determine which reviews should occur, route them to the correct entity and then return all approvals or rejections with required actions back to the District or to the Design Professional as the Owner's agent, to be included in the next design phase submission. The expected turnaround time for each phase, excluding Construction Documents review, shall be fourteen (14) working days. The Construction Document review, otherwise known as bidding and permit review, is estimated to be twenty-one (21) working days. The six authorities having jurisdiction reviews covered under PSFA-RASC submissions are:

a. Construction Industries Division, Regulation and Licensing Department (CID)
b. State Fire Marshal's Office (SFMO)

4.2.3 Any K-12 school project required by the NM Construction Industries Division (CID) to be permitted must first be authorized by a PSFA authority, Request for Approval of School Construction (RASC) prior to advertising for bid, letting of contracts or purchase orders. The PSFA will, as a function of the Construction Documents review, coordinate its final review with Construction Industries Department (CID) permit review. Upon joint PSFA and CID approval, the PSFA will issue a PSFA-RASC to the District, and Design Professional. An appropriately licensed contractor for Project will electronically submit the permit ready documents along with building permit application, appropriate permit fee and a copy of the PSFA-RASC and a Building Permit will be immediately issued without further review. Instructions for electronic submission and payment can be found on CID's website.

4.2.4 Funds available or anticipated for construction of the envisioned project may include furniture, fixtures and equipment and other requirements to fully complete, occupy, operate and maintain the facility. The Owner, in collaboration with the Design Professional, will establish an overall project budget for utilization by the Design Professional in the performance of services. Should the Design Professional conclude, at any time, that the MACC and the Scope of the Work to be accomplished are incompatible; including district vs. state funding in accordance with the Statewide Adequacy Standards and district match requirements, the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

4.2.5 **Geotechnical Engineering.** The Design Professional shall, during the Schematic Design Phase, submit to the Owner a statement of necessary geotechnical or soils engineering services that will be required. If the Design Professional does not believe the services of a Geotechnical Engineer are required for the project, a written notice of such shall be provided to the Owner stating same. Geotechnical engineering and any necessary surveys shall be Owner-provided.

4.2.6 **Civil Engineering.** The Design Professional shall, during the Schematic Design Phase, submit to the Owner a statement of need and extent of civil engineering required for the project to protect new and existing structures on or around the site from adverse conditions. Wide-ranging civil engineering, or civil engineering work outside of the Project Site Area proposed for the project. Any necessary surveys shall be Owner-provided.

4.2.7 **Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.** The Design Professional shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work sites, which are not to be removed and which do not unreasonably interfere with the work required under this Agreement. The Design Professional shall only remove trees when

specifically authorized to do so, and shall avoid damaging vegetation that will remain in place.

The Design Professional shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Design Professional shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or failure to exercise reasonable care in performing the designing of the work. If the Design Professional fails or refuses to repair the damage promptly, the Owner may have the necessary work performed and charge the cost to the Design Professional.

5. PHASE REQUIREMENTS

5.1 The documents identified in the Document Library are required to be utilized in the planning and design of the replacement facility.

5.2 The Design Professional/Engineer shall be responsible for all the items listed in each Phase as described below.

6. PROGRAMMING PHASE

6.1 PSFA/Owner shall schedule a meeting between the Design Professional and the User Representative to review the roles and relationships among all parties.

6.1.1 Project Program Statement

6.1.1.1 The Design Professional, utilizing its knowledge and experience, coupled with the Owner's Educational Specifications, Educational Programming Statement, the District Facility Master Plan, and other information provided by the Owner and the User Representative, shall develop the Project Program Statement. The Program Statement shall fulfill the requirements of the PSFA Request for Approval of School Construction (RASC) for this phase and ensure that the Design Professional and Owner have a mutual understanding of the project's goals and constraints including budget.

6.1.1.2 The Project Program Statement shall include a utilization study which projects the anticipated efficiency and the use for each new and existing classroom and support space in the context of the entire school facility utilization. Utilization benchmarks shall be as established by the PSFA guidelines.

6.1.1.3 Research and analysis of historical information, demographics, NM Public Education Department requirements.

6.1.1.4 The Design Professional shall transmit the Project Program Statement to the Owners, along with the written confirmation that the Design Professional has visited the site, became familiar with the local conditions, has correlated observations with current code requirements and life safety needs, and has a clear understanding of all observable and reasonably ascertainable existing conditions for the Project. Should the Design Professional conclude that the MACC and the Scope of the Work to be accomplished are incompatible, the Design Professional shall purpose

recommendations to reconcile the incompatibility and include it for consideration by the Owner.

6.1.1.5 If the Project Program Statement is acceptable to the Owner, the Design Professional shall obtain the written approval of the User Representative and the PSFA of the acceptance of the Project Program Statement. Following Owner approval, the Owner shall consider the Project Program Statement ready for submission for RASC review before commencing work on the Schematic Design Phase. The programming phase services shall include the following:

a. Project administration
b. Owner-supplied data coordination
c. Establishment of program goals and needs
d. Determination of space area requirements
e. Establishment of space relationships
f. Site analysis for building location
g. Obtaining licensing agencies' or other regulatory entities' consultation/review
h. Project budgeting
i. Presentation to Owner
j. Obtaining approval of programming documents from Owner

7. SCHEMATIC DESIGN PHASE

7.1 From the approved Project Program Statement, the Design Professional shall prepare Schematic Design documents that should include preliminary or schematic drawings in which the general scope, conceptual design, and the scale and relationship of components of a project are established, and a Preliminary Project Description (PPD) and a Level 1 UniFormat™ probable cost estimate.

7.2 Schematic Design Service shall include the following:

a. Project administration
b. Concept design for all applicable disciplines, including but not limited to:
    1. Project administration
    2. Civil
    3. Landscaping
    4. Structural
    5. Mechanical
    6. Electrical
    7. Other ***(See Other/Associated Services and Conditions, listed below)***
c. Interim design presentation(s) to Owner
d. Preliminary alternative materials and systems recommendations, including:
    1. Life cycle maintenance briefing
    2. Feasibility of utilizing alternative energy sources
e. Statement of probable construction cost
f. Submittal and presentation of schematic design documents to Owner
g. Obtaining approval of schematic design documents from Owner
h. Other (list)

8. DESIGN DEVELOPMENT PHASE

8.1 From the approved Schematic Design drawings and documents, the Design Professional shall prepare the Design Development Documents and a written statement that identifies the need for

any additional data, surveys, or tests. The design development phase shall include the following services

a. Project administration
b. Finalization of design and selection of materials and systems for all applicable disciplines, including but not limited to:
    1. Architectural
    2. Civil
    3. Landscaping
    4. Structural
    5. Mechanical
    6. Electrical
    7. Other ***(See Other/Associated Services and Conditions – Listed Below)***
c. Project scheduling
d. Statement of probable construction cost
e. Outline of specifications, including equipment and furnishings
f. Obtaining licensing agencies' or other regulatory entity's review and approvals, as required
g. Submittal and presentation(s) of design development documents to owner
h. Obtaining approval of design development documents from owner
i. Other **(*See Other/Associated Services and Conditions – Listed Below*)**

9. CONSTRUCTION DOCUMENT PHASE

9.1 From the approved Design Development Documents, the Design Professional shall prepare the Construction Documents based upon information contained in the Design Development Drawings and other documents previously approved by the Owner and setting forth in detail the requirements for the construction of the entire Project.

9.2 Construction Documents shall include written and graphic elements indicating contracting requirements, specifications and contract drawings. If Contractor(s) is to provide professional design services, layouts of equipment or certifications related to systems, materials or equipment in this Construction Documents, the Design Professional shall clearly define and identify such services and specify all performance and design criteria that such services must satisfy within the Construction Documents. The Owner or the Contractor shall not be responsible for the adequacy of the performance or design criteria specified by the Design Professional and required by the Construction Documents.

9.3 The responsibility for bringing the Project within the Maximum Allowable Construction Cost (MACC) is the Design Professional's. Should the Design Professional at any time conclude that the budget and the Scope of the Work to be accomplished are incompatible; the Owner shall be notified immediately, in writing, with proposed recommendations to reconcile same. The Design Professional shall obtain written approval of the Owner and User Representative(s) of any proposed changes prior to proceeding with revisions to the in-progress Construction Documents.

9.4 The construction document phase shall include the following:

a. Project administration
b. Preparation of final bidding and construction documents for all applicable disciplines, including but not limited to:
    1. Architectural
    2. Civil
    3. Landscaping

4. Mechanical
5. Electrical
6. Other ***(See Other/Associated Services and Conditions – Listed Below)***

c. Detailed cost estimates
d. Obtaining licensing agencies' and other regulatory entities' reviews and approvals
e. Presentation(s) of bidding and construction documents to owner
f. Obtaining approval of bidding and construction documents from owner

10. SOLICITATION PHASE

10.1 Solicitation phase services shall include the following:

a. Project administration
b. Request for Proposal (RFP) document distribution
c. RFP inquiries review and disposition
d. Proposed substitution, pre-approval, or prequalification review and disposition
e. Issuance of addenda
f. Representation and assistance to owner at RFP opening
g. Analysis of proposals and recommendation on award of contract
h. Assistance to owner in preparation and execution of construction agreement

11. CONSTRUCTION ADMINISTRATION PHASE

11.1 Construction administration phase services shall include the following:

a. Project administration
b. Administration of preconstruction conference
c. Periodic construction field observations
d. Administration of progress meetings
e. Review and disposition of
    1. Submittals
    2. Change orders
    3. Contractor pay requests
    4. other ***(See Other/Associated Services and Conditions – Listed Below)***
f. Interpretation of documents
g. Monitoring of construction schedule
h. Coordination of applicable regulatory agency review and approvals
i. Determination of substantial and final completion
j. Project closeout, including:
    1. maintenance, operation, and start-up assistance
    2. recording of construction and warranty documents

12. POST CONSTRUCTION

12.1 Post-construction services shall include the following:

a. Maintenance and operational troubleshoot
b. Eleven-month warranty review

13. OTHER/ASSOCIATED SERVICES AND CONDITIONS

13.1 When specifically identified/selected by the Owners, the following services shall be deemed part of and incorporated into the Basic Services, Responsibilities, & Requirements of the Design Professional.

13.1.1 ☒ ***Required if checked.*** **Owner HVAC & Controls Performance Assurance Program:** The Design Professional shall incorporate the elements and requirements of the HVAC & Controls Performance Assurance Program into all phases of the project. The Design Professional shall responsibly and fully participate in the program and coordinate with the Owner's Performance Assurance Contractor (PAC) during all stages of the Project. The PAC will submit reports to the Design Professional after reviewing the HVAC & Controls Design at all phases of the Project. The Design Professional shall then review each PAC report and issue a response to the PAC and Owner indicating action(s) to be taken in response to the PAC comments, in written form no later than fourteen (14) working days after receipt of each report.

13.1.2 ☒ ***Required if checked.*** **ENERGY STAR:** This Project is required to qualify for the EPA ENERGY STAR, the Design Professional shall provide the professional and engineering services necessary for its design and construction to meet the related basic criteria indicated in this Project's Agreement. The Design Professional shall coordinate with the Owner in developing an integrated design approach to establish an energy performance target that exceeds the ENERGY STAR rating of 75, generated from the U.S. EPA's Energy Performance Rating tool Target Finder, on the http://www.energystar.gov/newbuildingdesign web page. This approach shall be described as part of the Project Program Statement.

13.1.3 ☒ ***Required if checked.*** **Roofing Consultant:** The Design Professional shall responsibly, fully cooperate and coordinate with the Owner's Roofing Consultant during all stages of the Project which involve roof consultation, construction, or observation services. The PSFA Roofing Program Handbook shall be followed by the Design Professional on the Project, when roofing is involved.

13.1.4 ☒ ***Required if checked.*** **Furnishings and Equipment.** If the Owner has optionally added this work as an additional provision to Statement/Scope of Work, the Design Professional shall provide all required work for design, selection, preparation of Construction Documents and bidding for the procurement of project related furniture, fixtures, and equipment. Related services shall be performed in accordance with the same requirements contained in these General Conditions for review and approval by Owner as indicated for Basic Services unless modified in writing by Owner. Following installation of furniture, fixtures and equipment, Design Professional shall inspect the installation and prepare a list for items requiring correction. Upon notification from the installer that all corrections have been made, Design Professional shall again inspect the site to confirm that corrections were properly done and to authorize final payment for the furniture, fixtures and equipment.

EXHIBIT 2: SAMPLE AGREEMENT (PART A)

STATE OF NEW MEXICO
PUBLIC SCHOOL FACILITIES AUTHORITY
1312 Basehart SE # 200, Albuquerque, NM 87106 • (505) 843-6272 • https://www.nmpsfa.org/

AGREEMENT

between the

OWNER

and the

DESIGN PROFESSIONAL

2021 EDITION, VERSION 3.2, PART A OF AGREEMENT

Contract No.: _____

Project No: **[PSFA Project No.]**
Project: **[Short Title]**
School District: **[Name of School District]**
Location: **[City, State, Zip Code]**

SAMPLE

THIS AGREEMENT is made and entered into by and between the [Name of School District] hereinafter the "Owner" and the Public School Facilities Authority hereinafter referred to as the Co-Owner," and the [Name of the Design Professional's Company], hereinafter referred to as the "Design Professional." This Agreement, inclusive of Part B, General Conditions of the Agreement, shall become effective upon the date executed by the Co-Owner.

RECITALS

WHEREAS The Public School Capital Outlay Council (PSCOC) allocated funding from the Public School Capital Outlay Fund for [Project #] (Project);

WHEREAS, the Owner entered into a Memorandum of Understanding (MOU) with the PSCOC and the Co-Owner that identifies the funding source allocations between the Owner and Co-Owner for the Project along with the duties and responsibilities of, and between, the Owner and the Co-Owner;

WHEREAS the MOU requires the Owner and Co-Owner to approve the payments to the Design Professional;

WHEREAS, the Design Professional was selected as a result of a Competitive Sealed Qualifications-based Proposal, RFP# ___ in accordance with the New Mexico Procurement Code;

WHEREAS the Owner through its School Board, is authorized to enter into this Agreement for the Project pursuant to NMSA 1978 § 22-5-4 and approval from the Co-Owner; and

WHEREAS, the Owner and Co-Owner agree to hire the Design Professional, and the Design Professional agrees to provide professional and technical services as required hereinafter for the Project in accordance with the terms and conditions set forth in this Agreement.

ARTICLE 1
Key Personnel

1.1. The Design Professional's license certificate number is: [Design Professional's License Certificate Number].

1.2. The Design Professional's Key Personnel are:

Name	Title
Name	Title
Name	Title

SAMPLE

1.3. The Owner and Co-Owner Representatives are:

1.3.1. Owner Representative:

Name	Title

1.3.2. Co-Owner Representative

Name	PSFA Regional Manager

ARTICLE 2
PROJECT DESCRIPTION

2.1. The design services shall be performed for the following Project:

[The description of the project for the RFP goes here]

ARTICLE 3
TIME OF COMMENCEMENT AND COMPLETION

3.1. The Design Professional shall perform the services in compliance with Article 2 General Terms and Conditions, Part B, Exhibit A.

ARTICLE 4
COMPENSATION AND PAYMENT SCHEDULE

4.1. The Design Professional shall be compensated in full payment for services satisfactorily performed pursuant to Article 13, Part B Terms and Conditions.

4.2. Allowable Fees:

On the basis of a Fixed Fee of ___% of MACC	$ ___
Total Reimbursable Costs as identified at Section 4.4.	$ ___
Total Compensation	$ ___
Plus all applicable gross receipts tax at ___%	$ ___
Total Contract Sum	$ ___

4.3. The amount payable to the Design Professional under this Agreement totaling $___ shall be paid by the Owner and Co-Owner based on their respective funding allocations as follows:

SAMPLE

		Total MACC Amount:		
		MACC Percentage		
Allowable Fees:		**State**	**District**	
[Project Number & Name]		**0%**	**0%**	**Total**
Total on the Basis of a Fixed Fee of MACC (n.i.c. GRT):		$0.00	$0.00	$0.00
Total Reimbursable Not to Exceed Allowance (n.i.c. GRT):		$0.00	$0.00	
Other Services pg 4-6 (n.i.c. GRT)		$0.00	$0.00	
Total Basic Compensation:		$0.00	$0.00	$0.00
Plus all applicable gross receipts taxes (added at billing):	0.0000%	$0.00	$0.00	$0.00
Total Contract Sum:		**$0.00**	**$0.00**	**$0.00**

	Contract Sum			
Programming	0%	$0.00	$0.00	$0.00
Schematic Design	0%	$0.00	$0.00	$0.00
Design Development	0%	$0.00	$0.00	$0.00
Construction Documents	0%	$0.00	$0.00	$0.00
Bidding or Negotiations	0%	$0.00	$0.00	$0.00
Construction Administration	0%	$0.00	$0.00	$0.00
Acceptance Phase	0%	$0.00	$0.00	$0.00
11-Month Correction Period	0%	$0.00	$0.00	$0.00
Total Fixed Compensation - Basic Services	0%	$0.00	$0.00	$0.00

*Owner funding share at 100% includes work on the Project outside of the PSCOC award.

4.4. Compensation for Additional Professional Services: Additional Services are above and beyond the Basic Services and may be provided at the Owners election upon written authorization by the Owner, and as offered by the Design Professional pursuant to Article 2, Part B General Terms and Conditions.

Registered Design Professional Principal (fixed hourly rate):	$ ___
Registered Project Design Professional (fixed hourly rate):	$ ___
Design Professional's Project Representative (fixed hourly rate):	$ ___

4.5. Compensation for Specific Type Hourly Employee(s): Compensation may include a multiplier not exceeding 2.5 times the direct salary in accordance with Article 13, Part B General Terms and Conditions.

Design/Specification Writer, direct hourly rate:	$___	X	___ Multiplier	=	$___
Drafting/CADD Operator, direct hourly rate:	$___	X	___ Multiplier	=	$___
Clerical, direct hourly rate:	$___	X	___ Multiplier	=	$___
Construction Inspector, direct hourly rate:	$___	X	___ Multiplier	=	$___

SAMPLE

4.6. This section left intentionally blank OR Reimbursable expense: _____

4.7. Payment will be made to the Design Professional's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Design Professional within thirty (30) days of the date of written certification of acceptance. The OWNER MUST receive all Payment Invoices no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

4.8. In no event will the Design Professional 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.

ARTICLE 5
NOTICES

5.1. Any notice required to be given to any 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 Owner ([Name of School District]):

Name: _____
Title: _____
Address: _____
Email Address: _____
Telephone #: _____

To the Co- Owner (Public School Facilities Authority):

Name: _____
Title: _____
Address: _____
Email Address: _____
Telephone #: _____

To the Design Professional:

Name: _____
Title: _____
Address: _____
Email Address: _____
Telephone #: _____

SAMPLE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Co-Owner.

Design Professional ([Name of Firm]):

_____

Name

_____

Title

_____

Signature

_____

Date

Owner ([Name of School District]):

_____

Name

_____

Title

_____

Signature

_____

Date

Co-Owner (Public School Facilities Authority)

_____

Name

_____

Title

_____

Signature

_____

Date

SAMPLE

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

ID Number: [00-000000-00-0]

SAMPLE

EXHIBIT 3: SAMPLE AGREEMENT (PART B)

STATE OF NEW MEXICO
PUBLIC SCHOOL FACILITIES AUTHORITY
1312 Basehart SE # 200, Albuquerque, NM 87106 • (505) 843-6272 • https://www.nmpsfa.org/

GENERAL CONDITIONS OF THE AGREEMENT

between the

OWNER

and the

DESIGN PROFESSIONAL

2021 EDITION, VERSION 3.2, PART B OF AGREEMENT

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ARTICLE 1: DEFINITIONS

For purposes of this Agreement, the following definitions shall apply throughout the contract and to all attachments incorporated herein, unless otherwise specified.

1.1. **ADEQUACY PLANNING GUIDE:** The companion document to the Public School Capital Outlay Council Statewide Adequacy Standards (6.27.30 NMAC) provided by the state of New Mexico for use in the programming and design of new projects to meet adequacy (document available at https://www.nmpsfa.org/).

1.2. **APPROVAL OF SCHOOL CONSTRUCTION:** Any K-12 school project required by the NM Construction Industries Division (CID) to be permitted shall, prior to advertisement to bid or purchase of the project, be first authorized by a Public School Facilities Authority (PSFA) Request for Approval of School Construction (RASC) per Section 22-20-1 NMSA 1978.

1.3. **BIDDING:** The solicitation process to procure an offer to enter into contract for Work within the procurement rules of the Central Purchasing Office and in accordance with the Contract Documents and this agreement. (see Paragraphs 2.5.6 and 2.6).

1.4. **CENTRAL PURCHASING OFFICE:** The Central Purchasing Office is the School District's Central Purchasing Office.

1.5. **CODES:** Federal and state health or safety laws, codes, standards and regulations applicable to the locale where the project is located. The Building Code shall be the current New Mexico Building Code and the Fire Code shall be the current New Mexico Fire Code. If there is a conflict between the Building Code and the Fire Code, the Building Code shall always prevail. Local codes shall not be more restrictive than State adopted codes on any K-12 public school project.

1.6. **CONSTRUCTION DOCUMENTS:** Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Bid Forms, Agreement Forms, Wage Rates and Addenda issued prior to execution of the Construction Contract, and all required documents for the public advertisement, bidding, selection, award, construction and administration of the Construction. Documents for the Project must be in conformance with the New Mexico Procurement Code.

1.7. **DAY:** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

1.8. **DESIGN DEVELOPMENT DOCUMENTS:** Design Development (DD) documents finalize and describe the size and character of the entire project. A PSFA-RASC DD submittal should be approximately 60% complete project manuals and plan documents with elements such as civil, structural, mechanical and electrical systems, roofs, walls, floors fully developed and lacking only specific installation details required to construct. Submittal should specify equipment to be installed, furnishings required and such other elements as may be appropriate. The DD submittal shall be accompanied by a statement of probable cost, a probable construction schedule, as well as, any recommended program modifications.

1.9. **DESIGN PROFESSIONAL:** Is the legal entity qualified to do business in State of New Mexico that employs an individual or individuals licensed to practice the discipline or disciplines for the services to be performed under this agreement.

1.10. DESIGN PROFESSIONAL PROJECT REPRESENTATIVE: The individual shall be the Project Design Professional or shall be assigned by the Project Design Professional to provide on-site project administration as required for the Project. The Design Professional Project Representative shall be mutually agreed upon by Owner and Design Professional prior to the Bidding Phase of this Project and shall be authorized to make binding decisions, as if made by the Design Professional, as they relate to the carrying out of this agreement and the successful completion of the Project.

1.11. DIRECT SALARY: Gross wage paid excluding employee benefits or employer burden.

1.12. EDUCATIONAL SPECIFICATIONS: Provided by the Owner, Educational Specifications list the characteristics of a school facility on a space-by-space basis. They define the curriculum for the specific school and define facility attributes that will support and enhance the instructional programs. They describe the programmatic, functional, spatial, and environmental requirements of the educational facility, and what site attributes are desired. Whether the anticipated project is new or remodeled; the Educational Specifications shall be in written and graphic form for review, clarification, and define the scope of work and design requirements. The Educational Specifications, with the knowledge and experience of the Design Professional, will be interpreted and validated in preparing the Program Statement. The New Mexico Public School Adequacy Planning Guide incorporating the New Mexico Statewide Adequacy Standards available at https://www.nmpsfa.org/ shall be used as reference. The educational specifications consist of the following components:

1.12.1. Educational program and delivery system description: A detailed description of instructional and learning strategies for the specific school, including scheduling approach (periods, block schedule, etc.) and proposed general organization of curricular areas.

1.12.2. Specific program area information: A statement of total student numbers within the facility with a description of how they are to be organized into grade levels, groups, academies, etc. The activities within, and the relationship between spaces shall be defined along with recommended quantities and sizes of spaces. All student space, faculty space, and community space shall be defined and a capacity and utilization study for each space shall be provided which clearly indicates the anticipated efficiency of facility use.

1.12.3. Specific facility features: A complete description of all issues, special considerations, and special curricular and extracurricular activities to be accommodated by the facility. This shall include subject matter such as safety, security, sustainability, flexibility, community use, utilities, and any others that are to be included within the program. A calendar of events for the current or, if appropriate, a comparable local facility shall be included to support identification of space required to meet programmatic needs.

1.12.4. Enrollment information: The current year and five-year post-occupancy projection of attendance area enrollments in the grade levels affected by the facility.

1.12.5. Furnishings and equipment needs: A general description of required furnishings and built-in equipment needed for each space.

1.12.6. Budgetary information: An initial recommended total cost for the total project shall be included with subtotals that indicate separately site development and construction costs. An anticipated project schedule shall be provided.

1.13. ENERGY STAR: is a voluntary program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy that identifies energy-efficient products and buildings. Qualified products and buildings exceed minimum federal standards for energy consumption by a certain amount. Qualifying buildings which achieve an ENERGY STAR rating of 75 or above are eligible to receive the ENERGY STAR label. Web site: http://www.energystar.gov/. Compliance with ENERGY STAR is required on certain projects by Section 15-3-36, Energy Efficiency Standards for Public Buildings, NMSA 1978.

1.14. GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION: The General Conditions of the Contract for Construction of the Construction Contract as provided as a part of Exhibit G hereto.

1.15. HVAC & CONTROLS PERFORMANCE ASSURANCE PROGRAM: A program integrated into all phases of the Project with an Owner-provided contractor, for assurance and documented verification that HVAC and control systems for a school facility meet PSFA standards for acceptability, are installed and operating properly, and fulfill the functional and performance requirements of the design intent (document available at https://www.nmpsfa.org/).

1.16. MACC: Maximum Allowable Construction Cost is the total sum excluding gross receipts tax, available for construction purposes and may include furnishings, fixtures and equipment. MACC shall not include professional fees, testing fees, project contingency funds, acquisition costs or other soft costs in accordance with Articles 5.

1.17. MATERIALS: Materials and systems specified in the Construction Documents available at the time of this Agreement, or reasonably believed to be available prior to the Bidding Phase.

1.18. OWNER: Owner is the person or entity identified as such in the Agreement and is referred to throughout the Construction Documents as if singular in number. The Owner shall designate in writing the representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. If project includes any state funding, the Design Professional shall interpret the Owner referred to throughout this Agreement and the Construction Documents to be both the School District and the Public School Facilities Authority (PSFA) as if singular in number.

1.19. PROJECT: The Project is the total administration, design, construction and post-construction of which Work performed under this Agreement and the Construction Documents may be the whole or a part and which may include design or construction by the Owner or by separate professionals or contractors.

1.20. PROJECT DESIGN PROFESSIONAL: The individual Architect or Engineer registered in the State of New Mexico who shall sign and affix a New Mexico Design Professional's Seal to all plans, designs, drawings, specifications, and reports required for the Project. The Project Design Professional shall be mutually agreed upon by Owner and Design Professional at the time this Agreement is entered into and shall be named herein.

1.21. PROGRAM STATEMENT: The Program Statement shall be an abbreviated document that shall demonstrate support of the district provided Educational Specifications, facility space requirements, the overall project budget and MACC. The Program Statement shall clearly include:

1.21.1. Established goals, facts, regulations, conditions and concepts that bound the Project and clearly state and describe such information, as how the project serves the needs of the school(s) and district including number of students to be served, number of classrooms spaces, support spaces, utilization of spaces, infrastructure requirements, and so on, and;

1.21.2. Report in tabular form -- the count, type, design occupancy, utilization and square feet of each project space; total square feet of the entire project including tare; square footage of tare and its percentage of entire project square footage, and;

1.21.3. A project description that includes: site features, improvements, utilities development; utilities capacity; and off-site infrastructure requirements, and,

1.21.4. General descriptions that, along with all other requirements of this paragraph, adequately describe the project to ensure the Design Professional and Owner have a mutual understanding as to project scope and budget.

1.22. NMPSFA LIBRARY DOCUMENTS: Document set provided to PSFA within 30 days of start of construction for inclusion into the on-line NMPSFA School Facilities Reference Library. Documents shall include: each document in pdf format, clearly defining the Design Professional firm name, the name of the district, and name of the school; floor plan(s) with room use labeled on each space, elevations, facsimile of the tabular report included in program phase submittal and the Design Professional's description of the project explaining the features and benefits of the project and any other information, such as, special challenges that were overcome by the design.

1.23. REIMBURSABLE EXPENSES: Expenses in addition to the basic services compensation that include actual expenditures made by the Design Professional or its employees in the interest of the Project pursuant to this Agreement and limited in accordance with Article 6, Article 9 and as otherwise authorized in writing by the Owner.

1.24. REQUEST FOR APPROVAL OF SCHOOL CONSTRUCTION: PSFA Request for Approval of School Construction (RASC) is a phased construction documents approval process with each phase required to be approved prior to proceeding to next appropriate design phase and finally PSFA Request for Approval of School Construction (RASC), see Paragraph 1.2, required prior to the Central Purchasing Office advertisement to bid or purchase of the project.

1.25. ROOFING CONSULTANT: The Owner's separate consultant providing design review and / or field observation services on the Project scope of work involving roofing.

1.26. ROOFING HANDBOOK: The State of New Mexico Public School Facilities Authority Roofing Handbook is a PSFA guide document for the Design Professional to follow on projects which involve roofing work (document available at https://www.nmpsfa.org/).

1.27. SCHEMATIC DESIGN DOCUMENTS: The Schematic Design Documents submittal should include preliminary schematic drawings and a preliminary project description (PPD) that together clearly indicate the extent and relationship of the project components. A PPD shall include life

cycle costing for HVAC and controls to help the Owner and the Design Professional understand the various components and systems proposed for the project. It shall also serve as an early basis for discussion of the overall building and site systems including site drainage and other geotechnical considerations.

1.28. SITE: The physical location on which the Project is built, including all land acquired for the Project or associated with the Project including surface drainage, wells, transmission lines, easements, rights-of-way, roadways and existing facilities that may be directly or indirectly affected by the Project or that might affect the Project.

1.29. PERFORMANCE ASSURANCE CONTRACTOR (PAC): The Owner's separate contractor providing HVAC and controls testing, adjusting, and balancing for the Project, in accordance with the HVAC & Controls Performance Assurance Program.

1.30. USER REPRESENTATIVE: The School District staff or individuals that may be designated by the owner to represent the needs of facility and students or for which the project is being designed.

1.31. UTILIZATION ANALYSIS: Calculations performed to determine the efficiency and flexibility of use of the whole facility design in consideration of the entire educational program, scheduling, and available classroom space, and meeting the detailed requirements of the Request for Approval of School Construction (RASC).

1.32. OWNER REPRESENTATIVE: The individual who is an employee of the school district, named in this Agreement, otherwise known as the District Representative, with the authority to bind the Owner with respect to this Agreement in accordance with Article 3.

1.33. OTHER DEFINITIONS: Words or combination of words, if not defined herein shall be defined in the following order of precedence: (1), Definitions, of the General Conditions of the Contract for Construction; (2), within the context they are used; (3), as to well-known technical or construction industry meaning if used in accordance with such recognized meanings; (4), by the Webster's Collegiate Dictionary.

ARTICLE 2: DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES

2. BASIC SERVICES

2.1. GENERAL. The Design Professional's basic services shall consist of the following and as identified in Paragraphs 2.1 through 2.6:

1. Programming Phase
2. Schematic Design Phase
3. Design Development Phase
4. Construction Documents Phase
5. Bidding Phase
6. Construction Phase
7. PSFA Library Document Submittal
8. Record Drawings
9. Correction Period 11-month Inspection

The services to be provided during each phase listed herein include all consulting services required by the Design Professional to provide the professional architectural and engineering services incidental to the design and construction of the Project.

2.1.1. Not Included. Basic services do not include educational specifications, extensive civil engineering, or geotechnical engineering, sound engineering, landscape architecture or interior design for FF&E (furniture, fixtures and equipment) unless included in Other Conditions or Services (Part A of Agreement).

2.1.2. **Formatting Protocol.** Early planning organization of design work and all Project cost estimates are to follow Construction Specifications Institute (CSI) UniFormat™ convention. Project Manual is to follow CSI MasterFormat™ convention. Plan documents are to follow U.S. National CAD Standard (NCS) convention. All documents that are a part of this Project are to be archival able in electronic format in accordance with Paragraphs 9.1 and 11.23.

2.1.3. **Adequacy Planning Guide and Utilization Analysis.** The current edition of the New Mexico Public School Adequacy Planning Guide shall be used in its entirety. Utilization analysis shall performed by the Design Professional to demonstrate that the basic planning concepts of the Project conform to maximum requirements for flexible and efficient use of each space.

2.1.4. **Owner's Standard Documents and Guide Specifications.** The Design Professional shall use the Owner's standard Division 00 and Division 01 documents and guide specifications in developing the procurement requirements, including the Contract Documents for the Project. Such materials shall be modified as appropriate for the specific Project by the Design Professional and submitted for review by Owner prior to issue. Current versions of PSFA standard Division 00 and Division 01 are available on the web at https://www.nmpsfa.org/

2.1.5. **Furnishings and Equipment.** If the Owner has optionally added this work as an additional provision to Other Conditions or Services (Part A of Agreement), the Design Professional shall provide all required work for design, selection, preparation of Construction Documents and bidding for the procurement of project related furniture, fixtures, and equipment. Related services shall be performed in accordance with the same requirements contained in these General Conditions for review and approval by Owner as indicated for Basic Services unless modified in writing by Owner. Following installation of furniture, fixtures and equipment, Design Professional shall inspect the installation and prepare a list for items requiring correction. Upon notification from the installer that all corrections have been made, Design Professional shall again inspect the site to confirm that corrections were properly done and to authorize final payment for the furniture, fixtures and equipment.

2.1.6. **Project Budget.** The Design Professional shall request from the Owner an accounting of funds available or anticipated for construction of the envisioned project that may include furniture, fixtures and equipment and other requirements to fully complete, occupy, operate and maintain the facility. The Owner, in collaboration with the Design Professional, will establish an overall project budget for utilization by the Design Professional in the performance of services. Should the Design Professional conclude, at any time, that the MACC and the Scope of the Work to be accomplished are incompatible, including district vs. state funding in accordance with the Statewide Adequacy Standards and district match

requirements, the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.1.7. 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 upon written notice being given by the Owner to the Design Professional. The Owner's determination that sufficient appropriations are not available shall be accepted by the Design Professional and shall be final.

2.1.8. Geotechnical Engineering. The Design Professional shall, during the Schematic Design Phase, submit to the Owner a statement of necessary geotechnical or soils engineering services that will be required. If the Design Professional does not believe the services of a Geotechnical Engineer are required for the project, a written notice of such shall be provided to the Owner stating same. Geotechnical engineering and any necessary surveys shall be Owner-provided, an Additional Service or a reimbursable expense.

2.1.9. Civil Engineering. The Design Professional shall, during the Schematic Design Phase, submit to the Owner a statement of need and extent of civil engineering required for the project to protect new and existing structures on or around the site from adverse conditions. Extensive civil engineering, or civil engineering work outside of the immediate site proposed for the project, shall be an Additional Service or a reimbursable expense. Any necessary surveys shall be Owner-provided.

2.1.10. Qualifications, Standard of Care and Coordination. The Design Professional affirms that its employees and consulting professionals shall possess the experience, knowledge, and character necessary to qualify them individually for the services to be performed by them under this Agreement. All services shall be performed in accordance with the standards of their respective profession.

The Design Professional affirms that there shall be adequate participation, coordination and cooperation, by Design Professional and all consulting professionals, in the development of the Construction Documents so that the components of the Project are coordinated:

2.1.1.1. To avoid conflicting design information within the Construction Documents that could cause unnecessary delay or expense during the Construction Phase, and to avoid Project design conflicts with the site, existing facilities, traffic and pedestrian routing, and the general area of the Project; and,

2.1.1.2. So that the Project will function as intended.

2.1.11. Interdisciplinary Coordination Meetings. The Design Professional shall, as a process in the provision of Basic Services, hold Interdisciplinary Coordination Meetings and require attendance of appropriate consulting professionals, at suitable times during the development of the Construction Documents.

2.1.12. Owner HVAC & Controls Performance Assurance Program: The Design Professional shall incorporate the elements and requirements of the HVAC & Controls Performance Assurance Program into all phases of the project. The Design Professional shall responsibly

participate in the program and coordinate with the Owner-provided Performance Assurance Contractor (PAC) as required during all stages of the Project. The PAC will submit various reports to the Design Professional after reviewing the HVAC & Controls design at all required phases of the Project. The Design Professional shall then review each PAC report and issue a response to the PAC and Owner indicating action(s) to be taken in response to the PAC comments, in written form no later than 14 days after receipt of each report.

2.1.13. Roofing Consultant: The Design Professional shall responsibly cooperate and coordinate with the Owner-provided Roofing Consultant during all stages of the Project which involve roof consultation and/or observation services. The State of New Mexico Public School Facilities Authority Roofing Program Handbook shall be followed by the Design Professional on the Project, if roofing is involved.

2.1.14. Coordination with Other Owner's Contractors. The Design Professional shall participate with other separate contractors, the Owner's own forces and consultants, and the Owner in reviewing and coordinating their work when directed to do so. The Design Professional shall make any revisions to the schedule deemed necessary after a joint review with the Owner and mutual agreement as a process in the provision of Basic Services. If the Design Professional deems that such coordination justifies Additional Services, the Design Professional shall promptly submit a request for Additional Services, in writing, prior to proceeding with the Work. The Owner shall then give due consideration to the Design Professional's request and if it is mutually agreed, Additional Services will be authorized.

2.1.15. Design Phase Reviews. Unless waived by PSFA, the following design phases shall be submitted to and approved by PSFA, as part of the Request for Approval of School Construction (RASC) process, prior to proceeding to next appropriate phase; Program Statement, Schematic Design, Design Development and final or Construction Documents. Each design phase PSFA-RASC submittal application shall be approved and signed by the district's representative prior to submission to PSFA. If PSCOC funds are a part of project budget, then the PSFA regional manager approval and signature will also be required.

2.1.15.1. Plan reviews by other authorities having jurisdiction state agencies listed in this Subparagraph will be coordinated by PSFA as part of each PSFA-RASC submission. The PSFA will determine which reviews should occur, route them to the correct entity and then return all approvals or rejections with required actions back to the district or to the Design Professional as the Owner's agent to be included in the next design phase submission. The expected turnaround time for each phase, excluding Construction Documents review, shall be **14 days** (excluding intervening holidays). The Construction Document review, otherwise known as bidding and permit review, is estimated to be 21 days. The authorities having jurisdiction reviews covered under PSFA-RASC submissions are:

1. Construction Industries Division, Regulation and Licensing Department (CID)
2. State Fire Marshal's Office (SFMO);

2.1.16. Final Design Review, Bidding, and Permitting. Any K-12 school project required by the NM Construction Industries Division (CID) to be permitted must first be authorized by a Public School Facilities Authority (PSFA) Request for Approval of School Construction (RASC) prior to advertising for bid, letting of contracts or purchase orders. The PSFA will,

as part of the function of the Construction Documents review, coordinate its final review with Construction Industries Department (CID) permit review. Upon joint PSFA and CID approval, the PSFA will issue a PSFA-RASC to the district, or Design Professional as owner agent, along with an electronic set of permit ready documents. Instructions for electronic submission and payment can be found on CID's website. An appropriately licensed contractor for Project will submit the two permit ready documents along with building permit application, appropriate permit fee and a copy of the PSFA-RASC and a Building Permit will be immediately issued without further review.

2.1.17. ENERGY STAR: If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall provide the professional and engineering services necessary for its design and construction to meet the related basic criteria indicated in Part A, "OTHER CONDITIONS OR SERVICES".

2.2. PROGRAMMING PHASE

2.2.1. The Owner shall schedule a meeting between the Design Professional and the User Representative to review the roles and relationships among all parties.

2.2.2. A Project Program Statement shall be provided by the Design Professional in accordance with Paragraph 1.20, and developed with the Design Professional's knowledge and experience coupled with the Owner's Educational Specifications, Educational Programming Statement, the District Facility Master Plan, and other information provided by the Owner and the User Representative to the Design Professional. , The purpose of the Program Statement shall also fulfill the requirements of the PSFA Approval of School Construction (RASC) for this phase and ensure that the Design Professional and Owner have a mutual understanding of the project's goals and constraints including budget.

2.2.2.1. The Project Program Statement shall include a utilization study in accordance with Paragraph 1.21, which projects the anticipated efficiency and of use for each new and existing classroom and support space in the context of the entire school facility utilization. Utilization benchmarks shall be as established by the PSFA guidelines.

2.2.2.2. Lengthy research and analysis of historical information, demographics, NM Public Education Department requirements, development of drawings or documents, defining existing structures, or similar, shall not be the responsibility of the Design Professional under this agreement, unless specifically modified to include as an Additional Service or a reimbursable expense.

2.2.3. The Design Professional shall transmit the Project Program Statement to the Owner, along with written confirmation that the Design Professional has visited the site, become familiar with the local conditions, has correlated observations with current code requirements and life safety needs, and has a clear understanding of observable existing conditions for the Project. Should the Design Professional conclude that the MACC and the Scope of the Work to be accomplished are incompatible, proposed recommendations to reconcile the incompatibility shall be included for consideration by the Owner.

2.2.4. The Design Professional shall obtain the written approval of the User Representative and the Owner of the Project Program Statement. Following Owner approval, the Owner shall consider the Project Program Statement ready for submission to PSFA for RASC review before commencing work on the Schematic Design Phase.

2.2.5. **ENERGY STAR:** If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall coordinate with the Owner in developing an integrated design approach to establish an energy performance target that exceeds the ENERGY STAR rating of 75, generated from the U.S. EPA's Energy Performance Rating tool Target Finder, on the http://www.energystar.gov/newbuildingdesign web page. This approach shall be described as part of the Project Program Statement.

2.3. SCHEMATIC DESIGN PHASE

2.3.1. From the approved Project Program Statement the Design Professional shall prepare Schematic Design documents that should include preliminary or schematic drawings in which the general scope, conceptual design, and the scale and relationship of components of a project are established and a Preliminary Project Description (PPD) and a Level 1 UniFormat™ probable cost estimate. Generally, the Schematic Design describes:

1. The merits of the design solution(s) as it applies to the Project Program;
2. Conceptual site considerations including geotechnical, location, utilities, and drainage including identification of off-site issues;
3. Approximate locations of programmed areas;
4. Refine dimensions, areas and volumes of programmed areas and tare;
5. Establish types of materials envisioned;
6. The general planning and functional concepts of probable architectural, structural, mechanical and electrical systems;
7. Conceptual building plans including preliminary elevations, floor plans and sections;
8. Physical function(s) in accordance with Paragraph 12.1;
9. If roofing is contemplated, the Roofing Consultant, and the basis of design including materials;
10. If new HVAC system is contemplated, basis of design in compliance with the PSFA HVAC and Controls Performance Assurance Program including the Narrative with Life Cycle Cost Analysis (LCCA) of proposed system;
11. If required by Other Conditions or Services (Part A of Agreement), or as an Additional Service, a feasibility report on the use of energy sources other than fossil fuels for the heating and air conditioning; and,
12. If required by Other Conditions or Services (Part A of Agreement), or as an Additional Service, the Design shall include considerations of probable life cycle costs and modeling of anticipated performance of other project components;
13. ENERGY STAR Strategies and Methodologies: If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall further develop initial design strategies and methodologies to meet the ENERGY STAR criteria for the Project. Energy performance shall be targeted using U.S. EPA's Target Finder.

The Design Professional shall brief the Owner and User Representative on the Schematic Design that includes the requirements of this paragraph.

2.3.2. The Design Professional shall prepare study model(s) if appropriate, in the opinion of the Design Professional.

2.3.3. The Design Professional shall request site survey data in accordance with Paragraph 4.3.

2.3.4. The Owner and User Representative shall work with the Design Professional to ensure that information required for clear definition of project requirements is made available to the Design Professional in the form of written memoranda. The Design Professional shall request from the User Representative information sufficient to develop program criteria including the User's goals, objectives, functions and needs, as well as, an organizational chart of individuals that shall occupy the Project, list of equipment (other than incidental 110 volt, 60HZ devices, requiring less than 10 amps) that require utility services, required infrastructure and connections of equipment such as telecommunication and data. To the extent practicable and reasonable, the Design Professional shall incorporate the User Representative's requests into the documents for construction. The Design Professional shall advise the Owner, in writing, of any information required that has not been provided by the Owner or the User Representative, or any conflicts between the established program requirements, and the MACC. The Design Professional is solely responsible to the Owner, and not the User Representative, for the types of material incorporated into the construction, the size of the facilities constructed, and to design within the MACC.

2.3.5. Following corrections or revisions required by the Owner, the Design Professional shall obtain the written approval of the Owner and User Representative of the Schematic Design and documents before commencing work on the Design Development Phase.

2.3.6. Following Owner approval, the Owner shall consider the Schematic Design Documents ready for submission to PSFA for RASC review before commencing work on the Design Development Phase.

2.3.7. The responsibility for bringing the Project within the MACC remains with the Design Professional. Should the Design Professional at any time conclude that the MACC and the Scope of the Work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.4. DESIGN DEVELOPMENT PHASE

2.4.1. From the approved Schematic Design drawings and documents, the Design Professional shall prepare the Design Development Documents and a written statement that identifies the need for any additional data, surveys, or tests.

2.4.2. The Design Professional shall submit to the Owner for review and written approval the Design Development Documents and a refined Level 2 UniFormat™ probable cost estimate. Should the Design Professional conclude, at any time, that the MACC and the Scope of the Work to be accomplished are incompatible; including district vs. state funding in accordance with the Statewide Adequacy Standards and district match requirements, the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.4.3. Following corrections or revisions required by the Owner, the Design Professional shall acquire the approval, in writing, of the Owner and User Representative of all documents associated with the Design Development Phase before commencing work on the Construction Documents Phase.

2.4.4. Following Owner approval, the Owner shall consider the Design Development Documents ready for submission to PSFA for RASC review before commencing work on the Construction Documents Phase.

2.4.5. **ENERGY STAR:** If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall further develop original design strategies and methodologies. Projected energy performance shall be adjusted and evaluated using U.S. EPA's Target Finder. Submit updated report to Owner as part of the Design Development Documents submittal.

2.5. CONSTRUCTION DOCUMENTS

2.5.1. From the approved Design Development Documents, the Design Professional shall prepare the Construction Documents based upon information contained in the Design Development Drawings and other documents previously approved by the Owner and setting forth in detail the requirements for the construction of the entire Project.

2.5.2. Construction Documents shall include written and graphic elements indicating contracting requirements, specifications and contract drawings. If Contractor(s) is to provide professional design services, layouts of equipment or certifications related to systems, materials or equipment that are not included in this Construction Documents, the Design Professional shall clearly define and identify such services and specify all performance and design criteria that such services must satisfy within the Construction Documents. The Owner or the Contractor shall not be responsible for the adequacy of the performance or design criteria specified by the Design Professional and required by the Construction Documents.

2.5.3. Construction Documents are expected to include coordinated information as necessary to describe the anticipated performance, such as, but not limited to:

1. Site grading, emergency access, utility locations and the like;
2. All building components and systems;
3. Layout, locating or dimensioning of equipment, components, devices, diffusers and the like;
4. Schematics, definitions and capacities of controls, operating logic, sequencing, piping, circuitry, ducting and the like;
5. Details, schedules and specifications of all of the above; and,
6. Roof slopes, flashings, dissimilar material transitions and the like.

2.5.4. Layout, location and type of alarm system devices and panels; fire prevention system riser and heads; HVAC controls, logic and sequencing; and similar shall be defined by the Construction Documents and shall not be defined entirely by performance requirements.

2.5.5. Construction Documents shall include the Project Manual containing the project specifications and shall also include at a minimum bid forms, wage determination (if required), General Conditions of the Contract for Construction, Project Requirements and the Owner and Contractor Agreement. The Project Manual shall also include as a part of Division 1, a Required Submittals List, indexed by Master Format™ divisions identical to indexing of items (or categories of items) of work within the specifications for which shop drawings or other submittals will be required. The Required Submittals List shall indicate the submittal items that must be submitted together as a package for the Design Professional's efficient review of like or interrelated items to be compared or correlated one to another. Original of the Required Submittals List shall be loaded by the Design Professional into the PSFA Construction Information Management System (PSFA CIMS) prior to bid.

2.5.6. Upon completion of the Construction Documents, the Design Professional shall brief the Owner and User Representative on the Bidding Documents, specifically addressing previous Owner concerns and requirements. The Design Professional shall, at this briefing, furnish to the Owner a final and detailed Level 3 UniFormat™ probable cost estimate, including district vs. state funding in accordance with the Statewide Adequacy Standards and district match requirements. If Design Professional elects for out-of-house cost estimating expertise, any fees incurred in the preparation of the cost estimate(s) shall be paid by the Design Professional.

2.5.7. The responsibility for bringing the Project within the Maximum Allowable Construction Cost (MACC) is the Design Professional's in accordance with Article 5. Should the Design Professional at any time conclude that the budget and the Scope of the Work to be accomplished are incompatible; the Owner shall be notified immediately, in writing, with proposed recommendations to reconcile same. The Design Professional shall obtain written approval of the Owner and User Representative(s) of any proposed changes prior to proceeding with revisions to the in-progress Construction Documents.

2.5.8. Alternates should be additive unless there is a compelling reason otherwise.

2.5.9. The Design Professional shall return all original documents and drawings provided under Paragraph 4.3 to the Owner upon the Owner's request, but in no case later than when the Construction Documents Phase has been completed. Payment for the Construction Documents Phase will not be made to the Design Professional until the Owner has received said documents and drawings.

2.5.10. Bid Documents and Final Approvals. Before proceeding to the Bidding Phase, the Design Professional shall brief the Owner and User Representative on the Construction Documents in their entirety for completeness.

2.5.11. The Design Professional shall assist the Owner in filing the required documents for the approval of governmental and other authorities having jurisdiction over the Project not included in the PSFA-RASC review and approval process.

2.5.12. Following corrections or revisions required by the Owner, agencies and jurisdictions having authority, the Design Professional shall provide a signature approval block on or near the front sheet of the drawings for:

1. Owner and User (s);
2. Public School Facilities Authority;
3. Other agencies (if any, and as appropriate, see Subparagraph 2.1.15, 2.1.15.1 and 2.1.16);
4. Utility companies (as appropriate); and, shall obtain the approval signatures.

2.5.13. Project Wage Rate Determination: The Design Professional shall prepare a request to the State of New Mexico Labor and Industrial Division for a minimum wage rate determination for the Project pursuant to Section 13-4-11, NMSA 1978, and following the Owner's approval, shall make the request. The Design Professional shall provide the Division a description of the Project, an estimate of construction cost, an approximate bid opening date, and any other pertinent information required by the Labor and Industrial

Division. The Design Professional shall include the wage rate determination in the Bidding Documents.

2.5.14. ENERGY STAR: If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, then the Design Professional shall:

1. Fully develop and document energy performance strategies and methodologies for the Project, and review progress and adjust strategies and systems to meet or exceed ENERGY STAR criteria for the design;
2. Include within the final Specifications, and reference as necessary, a copy of the original "Statement of Energy Design Intent" generated from U.S. EPA's Target Finder, sealed by the Design Professional or his consulting mechanical engineer, showing evidence of the application to U.S. EPA, and that the energy design intent meets or exceeds ENERGY STAR standards; and,
3. Apply for the "Designed to Earn the ENERGY STAR" graphic which shall be affixed in the title block of the final Drawings and other related Construction Documents for the Project.

2.6. BIDDING PHASE

2.6.1. The Design Professional shall assist the Owner in obtaining bids and in awarding and preparing contracts for construction. All costs related to legal notice and initial advertising of project to bid shall be the responsibility of the Owner.

2.6.2. An Invitation to Bid shall be prepared by the Design Professional as directed by Owner, and shall include the bid date, location and time. The Central Purchasing Office will advertise for this Project in conformance with the Procurement Code.

2.6.3. No solicitation or advertisement to bid may occur prior to attainment of PSFA Approval of School Construction for the Project.

2.6.4. The Design Professional shall assist the Owner with local advertisement and shall concurrently load digitally and read-only, in accordance with Paragraphs 9.1 and 11.23, project description to the PSFA public bid advertisement website and construction documents into the PSFA Construction Information and Management System (CIMS). PSFA will train and assist Design Professional as appropriate to fulfill the requirements of this Paragraph.

2.6.5. The Design Professional shall provide sets of Construction Documents as required by the Owner, sets as required by the reviewing agencies, and sets as appropriate and authorized by the Owner to Bidders, such as General Contractors, major subcontractors, major suppliers or other interested parties approved by the Owner. The Design Professional shall provide an additional number of documents to be placed in plan rooms as well as in the Design Professional's office for review by prospective Bidders. The Design Professional shall charge a refundable plan deposit determined as sufficient by the Owner for each bid set except for those provided to plan rooms, reviewing agencies or others as Owner determines and shall keep an accounting of the deposits. Plan deposits shall be returned only to those returning Construction Documents in good condition.

2.6.6. The Design Professional shall clarify and answer any questions about the Construction Documents during the bidding process and shall issue Addenda as required, and as

authorized by the Owner, to all Bidders no later than **four (4) days** prior to the date of the opening of Bids, except an Addendum withdrawing the Request for Bids or one that includes postponement of the date for receipt of Bids.

2.6.7. The Design Professional shall review all bids, proposals, alternates or substitutions, if any, with the Owner, and then submit written recommendations as to their acceptance or rejection.

2.7. CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.7.1. The Construction Phase will commence with the award of the Contract for Construction and shall continue through Certification of Final Completion. In addition, the Design Professional Project Representative shall conduct an inspection of the Work with the Owner eleven months following Substantial Completion for the purpose of generating list of items needing correction by the Contractor.

2.7.2. The Design Professional Project Representative will provide administration of the Contract as described in the Construction Documents, and will be a representative of the Owner:

1. During construction;
2. Until final payment is due; and,
3. From time to time during the one-year period for correction of Work described in Article 12 of the General Conditions of the Contract for Construction.

2.7.3. The Design Professional Project Representative shall be a representative of the Owner during the Construction Phase and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded only through the Design Professional Project Representative. The Design Professional Project Representative shall have authority to act on behalf of the Owner only to the extent provided in the Construction Documents and any amendments thereto, unless otherwise modified in writing in accordance with other provisions of this Agreement.

2.7.3.1. The Design Professional is responsible for ensuring resolution by the appropriate parties, whether his consultant or the Contractor, of deficiencies identified and recorded in the PACs' Design Issues Log and Installation Issues Log. The PSFA's use of a PAC on any project does not relieve the Design Professional of responsibility for the design, engineering coordination and management of the construction project including site visits and observation reports associated with the Design Professional Contract.

2.7.4. The Design Professional Project Representative shall, consistent with the General Conditions of the Contract for Construction, has authority to reject work that does not conform to the Construction Documents. Where rejected Work is not promptly corrected, the Design Professional Project Representative may, if appropriate, recommend to the Owner that the Work shall stop. Whenever, in the Design Professional Project Representative's professional opinion, it is necessary or advisable for the implementation of the intent of the Construction Documents, the Design Professional Project Representative, with prior approval of the Owner, will have authority to require special inspection or testing of the Work in accordance with the provisions of the Construction Documents, whether or not such Work be then fabricated, installed, or completed.

2.7.5. The Design Professional Project Representative shall render written decisions, in accordance with the General Conditions of the Contract for Construction, on all claims, disputes, and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Construction Documents in accordance with the General Conditions of the Contract for Construction.

2.7.6. The Design Professional Project Representative's decisions on matters relating to aesthetic effect will, with the Owner's consent, be final.

2.7.7. Interpretations and decisions of the Design Professional Project Representative shall be consistent with the requirements and intent of the Construction Documents and shall be in written or graphic form.

2.7.8. The Design Professional Project Representative shall review and verify the accuracy of Contractor provided Punch Lists or other such information or representation required by the General Conditions of the Contract for Construction or otherwise required for the successful completion of the Project.

2.7.9. Communication required within this Paragraph 2.7, and to fulfill the Design Professional's administrative responsibilities within the General Conditions of the Contract for Construction, shall utilize the PSFA CIMS to the greatest extent possible in accordance with Paragraph 11.21 and 11.22.

2.7.10. EVALUATION OF THE WORK, REPORTS AND PROGRESS MEETINGS

2.7.10.1. The Design Professional Project Representative shall submit to the Owner, for approval, a list of critical points, based upon the construction schedule furnished by the Contractor, when the Work should be evaluated for conformance with the Contract Documents. The Design Professional Project Representative shall make periodic visits to the site at such critical points and other times as appropriate during the progress of the Work for the purposes of notifying the Owner of the progress and condition of the Work and to use all reasonable efforts to guard the Owner against defects and deficiencies in the construction. The results of all critical point site visits shall be documented in field reports posted into the PSFA web based CIMS within five (5) days of each such site visit.

2.7.10.2. The Design Professional Project Representative shall visit the site at intervals appropriate to the state of the Contractor's operations for review and evaluation of Work progress. Generally, these regular site visits shall be at intervals of one week coinciding with the Contractor's regular site meetings and may also coincide with the critical evaluation points identified in accordance with Subparagraph 2.7.10.1. Site visit intervals may be less often than once a week as established by agreement with the Owner, but never less often than is prudent to adequately review progress of the Work.

2.7.10.3. Should the Design Professional Project Representative determine that any portion of the Work varies from the requirements of the Construction Documents; the Design Professional Project Representative shall immediately notify the Contractor and the Owner of the nature of the work requiring correction or modification.

2.7.10.4. Weekly, the Contractor shall host a job site progress meeting in accordance with the General Conditions of the Contract for Construction. Meetings shall be open forum chaired by the Contractor and shall include any Subcontractors doing work or anticipating work in the near future, Owner, any entities the Owner would like to attend, including User Representative, Design Professional Project Representative and any Consultant(s) to the Design Professional as appropriate. The Contractor shall alert the Design Professional Project Representative as to which Consultants are requested to attend the next meeting and include that request in the meeting minutes. Phone or web conferencing may be used if effective in the opinion of the Owner.

2.7.10.5. The Design Professional Project Representative shall, eleven (11) months after Substantial Completion, schedule a meeting with the Owner, User Representative, Design Professional Project Representative, and Design Professional's Consultants to evaluate the building and its operations; inspect architectural systems; and make all reasonable efforts to discover defects in materials, equipment, and workmanship. Based on the eleven (11) month walkthrough, the Design Professional Project Representative shall generate a list of Work requiring correction.

2.7.10.6. **ENERGY STAR:** If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, then the Design Professional shall:

1. By Substantial Completion of the Project, open a Portfolio Manager account for the Owner and enter initial data for utility usage tracking required by ENERGY STAR.
2. Establish that the Project qualifies for ENERGY STAR Building Certification within 14 months of reaching 95% occupancy by using Portfolio Manager to determine actual annual energy use;
3. Complete the ENERGY STAR "Statement of Energy Performance" along with the required "Data Checklist" and apply the professional seal of the Design Professional or his consulting mechanical engineer to the original copy, showing that the energy performance meets or exceeds ENERGY STAR standards.

2.7.11. Modifications or Changes to the Work. Modification or Changes to the Work may be requested by any party through a Modification / Change Request (MCR). No Work that could reasonably be expected to alter the contract price or time or materially alter the Project outcome shall be undertaken until the Owner has authorized an MCR to proceed. The Owner reserves the right to seek reasonable remedy from the Design Professional for Modification or Changes to the Work or portions of Work made necessary due to the Design Professional's errors and omissions.

2.7.12. CERTIFICATE OF PAYMENTS

2.7.12.1. The Design Professional Project Representative shall, within five (5) days after receipt of the Contractor's Application for Payment, either notify the Contractor of errors in the Application or make recommendations to the Owner for payment of the amounts owing to the Contractor in the form of a Certificate for Payment that shall be subject to the Owner's approval.

2.7.12.2. The Certificate for Payment shall be based on observations at the site, evaluations of the Contractor's Applications for Payment, Contractor's Schedule, consultation with the Owner, and any other knowledge or information the Design Professional may have.

2.7.12.3. The Design Professional Project Representative shall either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional Project Representative determines is properly due, or notify the Contractor and Owner in writing of the Design Professional Project Representative's reasons for withholding certification in whole or in part as provided in the General Conditions of the Contract for Construction.

2.7.12.4. The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional Project Representative's evaluation of the Work and the data comprising the Application for Payment, that:

2.7.12.4.1. To the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Construction Documents subject to:

1. Subsequent evaluation of the Work upon Substantial Completion;
2. Subsequent evaluation of the Work upon Final Completion;
3. The results of any tests required by the Construction Documents or the Design Professional;
4. To minor deviations from the Construction Documents correctable prior to completion; and,
5. To any specific qualifications stated in the Certificate for Payment; and,

2.7.12.4.2. Contractor's As-built drawings have been reviewed by the Design Professional Project Representative and by the Design Professional's Consultants and found, to the best of the Design Professional's knowledge, information and belief, to accurately depict completed Work inclusive of, but not be limited to, actual locations and installed types, brand, model number and similar of all Work including ducts, pipes, conduit, equipment, walls and site utilities; and,

2.7.12.4.3. Payment certified is in accordance with the conditions of Article 9 and other parts of the General Conditions of the Contract for Construction.

2.7.12.5. The issuance of a Certificate for Payment shall not be a representation that the Design Professional has made any examination to ascertain how and for what purpose the Contractor has used the money paid on account of the Contract Sum.

2.7.12.6. Prior to the issuance of the Certificate for Payment that fully pays out the Schedule of Value line item for Close-Out; the Design Professional shall ensure that all requirements of Close-Out as defined in the General Conditions of the Contract for Construction have been delivered including completion of Record Drawings by Design Professional within thirty (30) days of Design Professionals' receipt and acceptance of As-Built's from the Contractor.

2.7.13. Submittals. The Design Professional shall within **fourteen (14) days,** or otherwise as agreed upon with Contractor, review and return to the Contractor the Contractor's submittals, such as shop drawings, product data, and samples, but only for conformance with the design concept of the Work and with the information given in the Construction Documents; and, for each submittal, the Design Professional shall designate in writing that the Design Professional:

1. Takes no exception; or,
2. Rejects and requires the Contractor to re-submit as specified; or,
3. Requires corrections or revisions as noted and then re-submit; or,
4. Approves as corrected; or,
5. Is returning with no action to be included within submittal package required by the Construction Documents.

2.7.14. MILESTONES

2.7.14.1. Approvals. The Design Professional shall obtain, review, approve or take other action on Contractor submitted punch lists, operation and maintenance manuals, warranties and related documents required by the Construction Documents.

2.7.14.2. Substantial Completion Inspection and Recommendation. Upon request by the Contractor and within **ten (10) days** of receipt of Contractor's Punch List, Close-out Schedule, and request for Substantial Completion, the Design Professional Project Representative shall conduct project inspections to determine the Date(s) of Substantial Completion, review the Contractor's Punch List and Close-out Schedule including any deficiencies identified by the Owner's separate consultants and, following consultation with the Owner, shall issue a Certificate for Payment appropriate to the Work complete, or give written direction to Contractor of required Work to be completed, or required revisions to the Punch List or Schedule prior to issuance of Substantial Completion.

2.7.14.3. Close-Out Progress. The Design Professional shall periodically review Close-Out Schedule progress and advise Owner and Contractor on progress. The Design Professional may be allowed Additional Services for services provided beyond Basic Services if Contractor fails to achieve Close-Out Schedule, and at no fault of the Design Professional.

2.7.14.4. Close-Out. The Contractor shall complete all of the requirements of close-out in accordance with the General Conditions of the Contract for Construction and at completion of close-out; and prior to Final Completion, submit written notice to the Design Professional requesting the Close-Out Meeting. The Design Professional shall schedule such meeting within **five (5) days** of the request, or otherwise reply in writing to the Contractor why the request is premature. At the Close-Out Meeting, all requirements to achieve close-out will be verified, and if Work is found to be complete, the Design Professional, with concurrence from the Owner, shall provide written approval of Contractor's completion of close-out requirements within **five (5) days** of the conclusion of the meeting.

2.7.14.5. Final Completion. Following successful close-out, and upon receipt of a written notice from the Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design

Professional will promptly make such inspection and, when the Design Professional finds the Work acceptable under the Contract Documents and the Construction Contract fully performed, the Design Professional will promptly, with the Owner's prior approval, issue a Certificate of Final Completion and upon acceptance by all parties, issue a final Certificate for Payment bearing the date of Final Completion and stating that to the best of the Design Professional's knowledge, information and belief and on the basis of the Design Professional's or Design Professional's Project Representative's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Construction Contract Documents.

2.7.15. Authorized Work. The Design Professional agrees not to bind the Owner or the State of New Mexico to any obligation not assumed herein, unless the Design Professional has express written authority to do so, and then only within the strict limits of that authority. Should the Design Professional or Design Professional's staff, or Consultants direct Work to be undertaken for which additional compensation or liability could reasonably be expected, and if such work is not:

1. An emergency endangering life and property; or
2. Approved by Modification / Change Request or Change Order; then, payment for such work shall not be borne by the Owner and shall constitute adequate grounds for dismissal or other action against the Design Professional.

2.7.16. PSFA Library Documents. The Design Professional shall provide to the PSFA in electronic form documents as defined in Paragraph 1.22.

2.7.17. Record Drawings. The Design Professional shall be responsible for converting Contractor provided As-Built Drawings into Record Drawings using information provided by the Contractor and by other knowledge the Design Professional may possess and endeavor to ensure their accuracy. The Design Professional shall, within **thirty (30) days** of Design Professionals' receipt and acceptance of As-Built's from the Contractor, provide:

1. One (1) electronic copy in .dwg format and one copy in .pdf format of Record Drawings with directory of contents submitted to Owner and uploaded by Design Professional into CIMS; and,
2. Any required USB flash drives or other electronic media to transmit Record documents.

2.7.18. Means and Methods. The Design Professional shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Construction Documents.

2.7.18.1. Jobsite Safety. Should the Design Professional or representative thereof, observe any condition, while on site, believed possibly to be unsafe, the Design Professional will immediately notify the Contractor's Superintendent and the Owner's Representative and shall document event in writing to the Owner and the Contractor. The Design Professional does not have stop-work authority and the Design Professional shall not be liable for such action made in good faith. A

decision to stop the work due to a potentially unsafe situation will reside totally with the Contractor. This paragraph shall not be deemed to create a duty on the part of the Design Professional or the Owner to monitor, or be responsible in any way for jobsite safety.

2.8. PROJECT REPRESENTATION BEYOND BASIC SERVICES

2.8.1. If the Owner and the Design Professional agree that more extensive representation for inspection of the Project than that described in Subparagraph 2.6.10, the Design Professional shall, upon written authorization of the Owner, provide one or more Project Representatives to assist the Design Professional Project Representative in carrying out such responsibilities at the site.

2.8.2. Subject to the Owner's approval, a Design Professional's Project Representative shall be selected, employed, and directed by the Design Professional. The Design Professional shall be compensated; therefore, as mutually agreed between the Owner and the Design Professional as set forth in an approved amendment to this Agreement which shall, in addition, describe the duties, responsibilities, and limitations of authority of such Project Representative(s).

2.8.3. The Owner reserves the right to employ an independent entity for Peer Review Design Professional to provide value and cost services on the Project. If a peer review Design Professional is retained, an amendment to this Agreement will be required including, but not limited to, the duties and limits of authority of the Peer Review Design Professional. The Design Professional shall cooperate with the Peer Review Design Professional in the performance of the Peer Review Design Professional's duties.

2.9. ADDITIONAL SERVICES

Additional Services to those included in Basic Services may at the Owner's election, be provided upon written authorization by the Owner, and as offered by the Design Professional and included as Exhibit E attached herewith. Additional Services may include but, are not limited to:

1. Financial feasibility of the project, any of the project's components or other special studies;
2. CAD documentation of existing facilities, planning surveys, site evaluations, environmental impact studies, or comparative studies of prospective sites other than those services required under Basic Services to provide a complete and operable facility;
3. Providing services related to future facilities, systems, and equipment which are not intended to be constructed during the Construction Phase;
4. Making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control, or responsibility of the Design Professional;
   Exception: Revisions necessary for Owner approval, compliance with state adopted codes, regulations or similar during Programming, Schematic Design, Design Development and Bid Documents or otherwise necessary to fulfill the intent of this Agreement, as well as, revisions necessary to bring the Project within the designated MACC, shall be considered Basic Services and not Additional Services;
5. Drawings, specifications, or any other supporting information, direction or services necessary in connection with a MCR or Change Orders, provided that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not for work provided pursuant to Basic Services and provided that such modification or change to the Work is not due to errors or omissions of the Design Professional;

6. Investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities when such work is not covered by this Agreement;
7. Inordinate submittal re-reviews, exceeding two, due to Contractor's non-compliance with Subparagraph 4.2.7.1 of the General Conditions of the Contract for Construction;
8. Exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's Work, or protracted completion of Close-Out;
9. Excessive time and effort in completing list of incomplete and non-compliant Contractor Work not included in Contractor's Punch List or otherwise due to Contractor's neglect of responsibilities; and,
10. Consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work.
11. Life cycle cost analysis beyond requirements of the PSFA HVAC and Controls Design Guidelines.
12. Services involving separate procurement contracts related to the Project. NOTE: These shall be performed in accordance with the same requirements contained in these General Conditions for review and approval by Owner required for Basic Services unless modified in writing by Owner.

2.10. TIME

2.10.1. The Design Professional shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

2.10.2. The Design Professional agrees that services will be performed diligently and without interruption at such rate of progress in order to comply with achieving the bid date as scheduled (see Exhibit A, Time Schedule for Project Phases). It is expressly understood and agreed, by and between the Design Professional and the Owner, that Exhibit A is a reasonable schedule inclusive of required approval and advertising times. The schedule shall not be modified except for reasonable cause outside of the Design Professional's control and unless agreed upon by the Owner. The Design Professional shall notify the Owner in writing if the Design Professional feels the Owner is causing a delay, such as, timely provision of required information or approvals. Failure of the Design Professional to perform within this schedule, except through authorized extensions, shall constitute a basis for termination or withholding of payment until schedule compliance is achieved by the Design Professional. If included in Part A, Other Conditions or Services, of this Agreement, and if the Design Professional neglects, fails or refuses to complete the Construction Documents by the scheduled bid date, or by any proper extension granted by the Owner, the Design Professional agrees to pay the Owner the amount stated in Part A for each late calendar day, not as penalty, but, as liquidated damages.

2.10.3. Time of Essence: All time limits stated in this Agreement are of the essence in the performance of this Agreement. The Design Professional will promptly inform the Owner in writing of any conditions beyond the control of the Design Professional that might adversely affect the Project.

2.10.4. Term: This Agreement shall terminate 48 months from approval unless terminated sooner in accordance with Article 10.

ARTICLE 3: USER REPRESENTATIVE

3.1. The Owner shall designate a primary User Representative that shall represent all other user representatives.

3.2. The User Representative(s) and the Owner shall provide the Design Professional with information required under Paragraph 2.1 through 2.5 as well as additional information required by the Design Professional for the purpose of defining the Scope of the Project and to assist the Design Professional and the Owner in the development and completion of the Project.

3.3. The User Representative(s) shall meet as needed with the Design Professional and shall respond to all written inquiries submitted by the Design Professional within any time limits set forth in the inquiry.

3.4. Information submitted directly by the User Representative(s) to the Design Professional is subject to subsequent approval by the Owner.

ARTICLE 4: OWNER'S RESPONSIBILITIES

4.1. The Owner shall designate in writing an Owner's Representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as provided in Subparagraph 2.6.15, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

4.2. The Owner and the User Representative(s) shall provide information to the Design Professional as requested regarding the User's requirements for the development of the Project Program Statement.

4.3. The Owner shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other improvements including landscaping full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths; and, to furnish soil tests, test borings, material tests, environmental management plan and other special data as may be mutually agreed by the Owner and Design Professional, to the best of the Owner's capabilities.

4.4. The Owner shall examine documents submitted by the Design Professional and shall render decisions promptly to avoid unreasonable delay in the progress of the Design Professional's services.

4.5. If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents, prompt written notice thereof shall be given by the Owner to the Design Professional.

4.6. The Owner shall provide all Central Purchasing functions and shall be responsible for associated costs such as the cost of advertising project and construction document reproduction costs in accordance with this agreement.

4.7. **ENERGY STAR:** If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, then the Owner shall:

1. Assist the Design Professional and participate in opening the Owner's Portfolio Manager account for entering data for utility usage tracking required by ENERGY STAR.
2. At Substantial Completion, implement an energy management program in accordance with ENERGY STAR.

ARTICLE 5: CONSTRUCTION COST

5.1. Evaluations of the Owner's Project Budget, statements of Probable Construction Cost, and detailed estimates of construction cost prepared by the Design Professional represent the Design Professional's best judgment as a professional familiar with the construction industry. Notwithstanding the requirements of Paragraphs 5.4 and 5.5, it is recognized, that the Design Professional does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions.

5.2. The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The MACC may be adjusted by the Owner at the completion of the Programming Phase, and the design fees modified. The MACC, at the start of the Schematic Design Phase, may only be adjusted based upon modifications to the Scope of Work approved in advance by the Owner. The Design Professional shall be permitted to determine, with Owner approval, what materials, equipment, component systems, and types of construction are to be included in the Construction Documents to bring Construction Cost within the MACC. With the written consent of the Owner, which consent shall not be unreasonably withheld, the Design Professional may also include in the Construction Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

5.3. If bidding or negotiations with potential contractors have not commenced within **sixty (60) days** of the Design Professional submitting Construction Documents to the Owner, the Project budget or MACC may be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.4. When the MACC is exceeded by the lowest bona fide bid, the Owner may:

1. Pending fund availability, give written approval of an increase in the MACC; or,
2. Authorize re-bidding the Project within a reasonable time; and,
3. Cooperate with the Design Professional in revising the Project Scope and, as required, to reduce the Probable Construction Cost; and,

If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Design Professional in revising the quality and Scope of the Project; and the Design Professional, without additional charge for services or re-printing of the Drawings and Specifications, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC and assist the Owner through the re-bidding process.

5.5. If during the development of the Construction Documents, estimates indicate that the Project exceeds the MACC, the provisions of Paragraphs 5.1 through 5.4 shall apply.

ARTICLE 6: REIMBURSABLE EXPENSES

6.1. Reimbursable expenses are limited by this Agreement and are those expenses above and beyond Basic Services compensation and are the actual expenditures made by the Design Professional in the interest of the Project. Reimbursable expenses shall be limited to expenses for:

1. Surveying, hazardous material testing or abatement, geotechnical testing, extensive civil engineering or any other project related expenses not included in Basic Services and authorized by the Owner;
2. Transportation when traveling in connection with the Project, if allowed by provisions incorporated into Other Conditions or Services (Part A of Agreement). Such expenses are limited to per diem and mileage rates as set forth in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8, NMSA 1978, as amended, except that such travel shall be authorized in advance by the Owner;
3. Fees paid for securing approvals of authorities having jurisdiction over the Project;
4. Reproduction costs for Owner reviews and initial bidding, provided there is written Owner prior approval of estimated costs. The Design Professional may be responsible for subsequent bidding reproduction costs in accordance with Paragraph 5.4. Reproduction costs during the construction phase, provided there are written Owner prior approval of estimated costs. All other reproduction costs as may be required for office use of the Design Professional and the Design Professional's Consultants shall be a part of the Design Professional's Basic Compensation; and,
5. Conditional costs necessary when working in remote locations, such as, Federal Express and long distance phone charges.

6.2. Construction documents and specifications may be printed under the terms of a contract between the Owner or the PSFA and a current Vendor on contract.

6.3. The Design Professional shall charge Bidders a deposit fee authorized by the Owner that approximates the full cost of reproduction of drawings, specifications, and other documents required by the Owner to solicit bids and execute the Construction Contract. This fee shall be completely refunded, if the documents are returned in usable condition within the time limits specified in the Invitation to Bid. All forfeited fees shall be given to the Owner.

6.4. Applicable gross receipts taxes (GRT) on reimbursable expenses or Additional Services received by the Design Professional under the provisions of this Contract shall be paid by the Design Professional. The Design Professional shall use and require the use of Tax Exempt Certificates by Consultants and Suppliers whenever allowed by law. In any event, the Design Professional shall not include taxes paid as a part of the base dollar amount upon which taxes are calculated.

6.5. Applicable gross receipts tax shall be charged at the current rate at the time of the billing.

6.6. Design Professional shall have written Owner approval prior to incurring any reimbursable expense in excess of $200.

6.7. Reimbursable expenses shall not exceed allowance defined in Part A of this Agreement and shall be compensated in accordance with Paragraph 13.5.

ARTICLE 7: PAYMENTS TO THE DESIGN PROFESSIONAL

7.1. PAYMENTS FOR BASIC SERVICES

7.1.1. Payment for Basic Services shall be in proportion to services performed within each phase of services as provided by this Agreement.

7.1.2. When portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, based on the:

1. Lowest bona fide bid or negotiated proposal; or
2. Most recent Statement of Probable Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

7.2. PAYMENT FOR SERVICES AND COSTS

7.2.1. The Design Professional shall submit monthly, a fully completed request for payment for all completed services and costs on the form provided as Exhibit F to this Agreement. **Request for Payment shall be submitted to the Owner for approval on or about the 25th of the month for which payment is requested.** The Owner shall within **seven (7) days** of receipt of a properly executed Request for Payment, approve or notify the Design Professional in writing of specific reasoning for any disputed and unapproved amounts. The Design Professional shall ensure that the approved **Request for Payment is delivered to the PSFA Regional Manager prior to the 8th of the month "cut-off"** who shall then process approved amounts within 30 days of that time, with faster payment notwithstanding, and make payment of undisputed amounts to the Design Professional. Requests for payment received after the 8th of the month "cut-off" will be processed along with the following month's applications.

7.2.2. The Design Professional shall submit, with billings at the completion of the Project, certification that payment has been made to all consultants, suppliers, and others for materials and services required by this Agreement.

7.3. **Payments Withheld.** No deductions or withholdings shall be made from the Design Professional's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractor, or on account of the cost of modification to the Work other than those for which the Design Professional may be liable in accordance with this Agreement.

7.4. **Project Suspension or Termination – Other Parties.** In the event of termination or suspension of the Project due to the fault of parties other than the Design Professional, the Design Professional shall be compensated for services performed to termination or suspension date in accordance with Article 10.

ARTICLE 8: DESIGN PROFESSIONAL'S RECORDS AND AUDIT

8.1. Records of expenses by the Design Professional and Consultants pertaining to this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the Owner or the Owner's authorized representative. The Owner shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive or illegal payments.

8.2. Records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor and shall be maintained for inspection of a period of three years following completion of the Project or any disputes related to the Project or, until all applicable Statutes of Limitations have run, but not less than six years, whichever period is longest and this provision shall survive and continue beyond the termination of other terms of this Agreement.

ARTICLE 9: OWNERSHIP AND USE OF DOCUMENTS

9.1. Original construction document drawings, designs, specifications, notes, project manuals, and related documents of Work developed in the performance of this Agreement by the Design Professional shall become the sole property of the Owner whether the Project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. These documents shall be kept on file by the Owner unless, by written request, the Owner elects that the Design Professional maintain the originals. The Design Professional shall, regardless of location of originals, maintain a complete digital set of any and all record documents developed under this Agreement. Prior to Bid, the Design Professional shall provide to the Owner a digital set of the Bid Documents in accordance with Paragraph 11.23.

9.2. All documents, including drawings and specifications prepared by the Design Professional pursuant to this Agreement are not intended or represented to be suitable for reuse by the Owner on any other project. The Design Professional shall not be liable should the Owner use the documents, in whole or in part, in the future when the Design Professional’s services are not retained.

9.3. The original drawings may be marked by the Owner or the Design Professional to designate the restrictions of use of these documents as set forth in Paragraph 9.2.

9.4. **Copyright.** The Owner will retain all common law, statutory and other reserved rights, in addition to the copyrights. No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Design Professional.

ARTICLE 10: TERMINATION OF AGREEMENT

10.1. If either party should fail to fulfill in a timely and appropriate manner obligations under this Agreement, or if either party should violate any of the covenants, agreements, or stipulations of this Agreement, the non-breaching party, in addition to other remedies available under the terms of this Agreement, shall thereupon have the right to terminate this Agreement by:

1. Giving written notice to the other party of such default;

2. Specifying steps necessary to cure the default; and,
3. Following notice(s) designating the date of termination at least seven (7) days before the effective date of such termination.

If the default has not been cured by the specified date of termination, it shall be effective without further notice.

10.1.1. Failure of the Design Professional to maintain the schedule is cause for termination.

10.1.2. The Design Professional may terminate this Agreement if, through no act or no fault of the Design Professional or Consultants to any tier, the Owner is causing a delay and the Design Professional has notified the Owner in writing if the Design Professional feels the Owner is causing a delay and cure for the delay, the Design Professional may terminate the Agreement if such delays aggregate more than one hundred percent (100%) of the total number of days scheduled in Part A of this Agreement for completion of Construction Documents, or one hundred twenty (120) days in any 365-day period, whichever is less.

10.2. This Agreement may be terminated by Owner without cause upon written notice delivered to the other party at least **ten (10) days** prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

10.3. In the event of termination, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in-progress, prepared by the Design Professional under this Agreement shall become the Owner's property, and the Design Professional shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by the Owner which are then due.

ARTICLE 11: GENERAL AND SPECIAL PROVISIONS

11.1. Law. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

11.2. Liability and Claims.

11.2.1. As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.

11.2.2. The Owner and the Design Professional waive all rights against each other and against the Contractor, consultants, agents, and employees of the other for damages covered and paid by any property insurance during construction as set forth in the Conditions of the Contract for Construction, as provided as a part of Exhibit G of this Agreement. The Owner and the Design

Professional each shall require appropriate similar waivers from their Contractor, consultants, and agents.

11.2.3. As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents. The liability of the Owner, the PSFA and the State of New Mexico shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-41-1 et seq., NMSA 1978, as amended.

11.3. Mediation.

11.3.1. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

11.3.2. The parties shall make best efforts to resolve claims, disputes or other matters in question by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of **sixty (60) days** from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

11.3.3. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Settlement Agreements reached in mediation and signed by all parties involved in the dispute; shall be enforceable in any court having jurisdiction thereof.

11.4. Arbitration.

11.4.1. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 11.3.

11.4.2. Claims, disputes or other matters in question between the parties not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Design Professional.

11.4.3. A demand for Arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

11.4.4. Claims and Timely Assertion of Claims. The party filing a Notice of Demand for Arbitration must assert in the Demand all Claims then known to that party on which arbitration is permitted to be demanded.

11.4.5. Arbitration proceedings under this agreement may be consolidated or joined with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator, in any of the pending cases, or if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order. Inclusive to this Subparagraph are the Owner, the Design Professional, the Contractor, all tiers of Subcontractors, material suppliers, equipment suppliers, engineers, designers, lenders, sureties, and all other parties concerned with the construction of the Project are bound, each to each other, by this Subparagraph, provided such party has signed this agreement or has signed an agreement which incorporates this agreement by reference or signs any other agreement to be bound by this arbitration clause.

11.4.6. Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

11.5. Effective Agreement. This Agreement shall not become effective until: (1) approved by the Owner for compliance with the financial requirements of the legislation or funding source authorizing the Project in whole or in part; and (2) signed by all parties required to sign this Agreement.

11.6. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by Registered or Certified Mail, Federal Express, or similar service with proof of delivery to the last business address known to the party giving notice. The address to which notices shall be mailed are as provided on the first page of this Agreement and either parties address may be changed by written notice given by such party to the other as herein above provided.

11.7. Conflict of Interest. The Design Professional affirms that he currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Design Professional further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Design Professional. The Design Professional also agrees that, unless Owner provides prior written approval, neither the Design Professional nor any employee of same shall have an interest, direct nor indirect, in any company hired for the Project as Contractor, any tier Subcontractors, or supplier, except when the Project is a design-build project.

11.8. Bribes. Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-24-1, 30-24-2, and 30-41-1 through 3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 199, NMSA 1978) imposes civil and criminal penalties for its violation.

11.9. Code Compliance. The Design Professional affirms that the design shall be in compliance with Federal and State codes, regulations and laws applicable to the Work including, but not limited to, the New Mexico Building Code and New Mexico Fire Code. In all cases, the New Mexico Building Code shall govern in the event of any conflict. The Design Professional's responsibility shall not

extend to unwritten policies or interpretations of Officials that are not clearly defined by the Codes, Regulations or Laws.

11.10. Equal Opportunity Compliance: The Design Professional agrees to abide by Federal and State laws, rules and regulations and executive orders of the Governor of New Mexico pertaining to equal employment opportunity or deny from participation in, deny the benefits of or otherwise subject to discrimination under any activity performed under this Agreement any person on the grounds of race, color, religion, national origin, sex, sexual preference, age or disability. If the Design Professional or any Design Professional consultant is found not to be in compliance with these requirements during the term of this Agreement, the Design Professional agrees to take appropriate steps to correct this noncompliance.

11.11. Liability Insurance.

11.11.1. Professional Liability Insurance. The Design Professional shall provide and maintain Professional Liability Insurance with one million dollar limit ($1,000,000) and a maximum deductible of $50,000 unless as otherwise provided in Other Conditions or Services (Part A of Agreement) and provide a Certificate of Coverage on the form designated herein as Exhibit B. Such insurance coverage shall be maintained in full force and effect at all times during the performance of Project services and for a period thereafter of not less than three (3) years following Substantial Completion of the Work. The coverage provided herein shall contain an endorsement providing **thirty (30) days** notice to the Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer licensed to do business in the State of New Mexico and acceptable to the Owner. Each year insurance is required; it shall be the Design Professional's obligation to provide evidence of compliance with this Paragraph. Provision of insurance does not limit the liability of the Design Professional under 11.2.3 herein.

11.11.2. Liability Insurance. The Design Professional shall purchase from and maintain in a company or companies lawfully authorized to transact insurance in New Mexico, insurance that shall protect the Design Professional and from claims set forth below, which may arise out of or result from operations under the Contract and for which the Design Professional may be legally liable, whether such operations be by the Design Professional or by anyone directly or indirectly employed, or by anyone for whose acts may be liable:

1. Claims under Workers' Compensation, Disability Benefit and other similar Employee Benefit Acts, which are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Design Professional's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design Professional's employees;
4. Claims for damage for personal injury;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
6. Claims for damages because of bodily injury, death of a person property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations; and
8. Claims involving contractual liability insurance applicable to the Design Professional's obligations.

11.11.2.1. The Design Professional shall ensure that liability insurance is maintained in accordance with Paragraph 11.11 and may, at Design Professional's option, either insure the activities of its Consultants or require them to maintain insurance to cover all claims in Paragraph 11.11. If the Owner is damaged by the failure or neglect of the Design Professional to maintain insurance as described above, then the Design Professional shall be liable for all costs and damages properly attributable thereto.

11.11.2.2. The insurance required by Subparagraph 11.11.2 shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage, shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after final payment.

11.11.2.3. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by Paragraph 11.11.2 shall contain a provision 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 Owner.

11.11.2.4. 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 Design Professional will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate ACORD form, or similar format acceptable to the Owner and shall include the following statements:

1. "The State of New Mexico, the *(the name(s) of the Owner whose name(s) appear on the Agreement)*, its agents, servants and employees are recognized as Additionally Insured."
2. "The insurance coverage certified herein will not be canceled or materially changed, except after **forty-five (45) days** written notice has been provided to the Owner"
3. "The insured will not violate, or permit to be violated, any conditions of this policy, and will at all times satisfy the requirements of the insurance company transacting the policy."
4. "The coverage provided by this certificate is primary."
5. "Nothing in this certificate of coverage will be construed to affect the State of New Mexico or owner, agents, servants and employees defenses, immunities or limitations of liability under the New Mexico Tort Claims Act."

11.11.2.5. Minimum Required Coverage:

11.11.2.5.1. Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged in work on this Project and under this Contract. In case any class of employee engaged in work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Design Professional shall provide, and cause each Consultant to provide Employer's Liability Insurance in an amount not less than five hundred thousand

($500,000). Failure to comply with the conditions of this Subparagraph will subject this Contract to termination.

11.11.2.5.2. Public Liability Insurance shall not be less than the liability amounts set forth in the New Mexico Tort Claims Act, §41-4-1 et seq. NMSA 1978, as it now exists or may be amended.

11.11.2.5.3. Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars ($1,000,000) per occurrence combined single limit for both personal injury and property damage.

11.12. Consultant Relations. By appropriate agreement, written where legally required for validity, the Design Professional shall require each Consultant providing services for this Project, to the extent of the Services to be performed by the Consultant, to be bound to the Design Professional by the terms of this Agreement including, but not limited to the requirements of Paragraphs 11.11, and to assume toward the Design Professional all the obligations and responsibilities, including performance, as the Design Professional assumes toward the Owner. Each Consultant agreement shall preserve and protect the rights of the Owner under this Agreement with respect to the services to be performed. Where appropriate, the Design Professional shall require each Consultant to enter into similar agreements with their consultants. The Design Professional shall make available to each proposed Consultant, prior to execution of an agreement related to this Project, copies of this Agreement to which the Consultant will be bound. Nothing contained in this Paragraph or elsewhere in this Agreement shall create any contractual relationship with or cause of action in favor of a third party against the Owner.

11.13. Assignment. The Design Professional 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 consent of the Owner.

11.14. Mergers, Dissolution, Successors, and Assigns. The Design Professional agrees that during the term hereof it will maintain its existing business structure, the terms and provisions hereof shall extend to, be binding upon, and inure to the benefit of the successors and assigns of the respective parties hereto, the business structure will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be:

1. Assumes, is capable of, and agrees in writing to perform all of the obligations of the Design Professional hereunder;
2. Qualifies to do business in the State of New Mexico, including providing a legal resident registered Architect or Engineer of New Mexico as Project Design Professional;
3. Has the written approval of the Owner for such change in business structure;
4. Unless the Project Design Professional remains same; and, if not
5. Prior written approval is obtained from the Owner naming a new Project Design Professional.

11.15. Release. The Design Professional, upon final payment of the amounts due under this Agreement, releases the Owner, the PSFA, the State of New Mexico and their officers and employees from any liabilities and obligations arising from or under this Agreement, including, but not limited to, all damages, losses, costs, liability, expenses, attorney's fees and costs of litigation that the Design Professional may incur.

11.16. Captions and Section Headings. The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

11.17. Conformity with Law and Severability. Each and every provision of law and clause required by law to be inserted in this Contract shall be read and enforced as though it were included herein; and if through error or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall be amended without cost to make such insertion or correction and that the remainder of this Agreement shall remain in effect and not be affected thereby. In the event that any provision of any contractual document shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

11.18. Exhibits and Attachments Incorporated by Reference. All exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to herein this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

The following exhibits are attached to and made a part of this Agreement:
Exhibit A - Time Schedule for Project Phases
Exhibit B - Architect's or Engineer's Errors and Omissions Insurance Certificate
Exhibit C - List of Consultants and Consultants' Agreements
Exhibit D - Work Order and Work Order Rate Schedule (If Used)
Exhibit E - Design Professional Additional Services Proposal/Amendment Form
Exhibit F - Design Professional Pay Request Form
Exhibit G - Boilerplate procurement documents and Conditions of the Contract for Construction

11.19. Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

11.20. Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement

11.21. PSFA as Co-Owner. If project includes funding from the Public Schools Capital Outlay Council (PSCOC), and in accordance with Paragraph 1.2, all Work that incorporates PSCOC funding shall:

1. Interpret the Owner referred to throughout the Construction Documents to be both the School District and the PSFA as if singular in number;

2. Have two (2) Owner representatives such that agreement of both representatives shall be required in all instances where the Construction Documents require or contemplate Owner approval;
3. Recognize both the PSFA representative and the school district representative designated in writing, as Owner in accordance with Subparagraph 1.18 and this Subparagraph; and,
4. After Final Completion in accordance with the General Conditions of the Construction Contract, the Contract requirements shall recognize only the School District as the Owner; and,
5. Be done within and in accordance with Subparagraph 11.22 requiring use of the PSFA-CIMS system; and,
6. Otherwise be fully in accordance with the Construction Documents including all contractual and implied responsibilities.

11.22. Communication Facilitation. Communication utilizing the PSFA Internet/Web based Construction Information Management System (CIMS) system is a requirement of Basic Services. The Design Professional shall if needed, and within **seven (7) days** of this agreement, schedule PSFA training of project personnel on the use of PSFA-CIMS. The Design Professional shall utilize PSFA-CIMS for project management during development of the Contract Documents and for project administration during construction of the Project along with the Contractor, and the Owner. Each party shall:

1. Create all contractual communications through the PSFA-CIMS and load all Construction Documents into PSFA-CIMS;
2. Have access to the Internet and an Internet e-mail address, of their own choice, and provide to the PSFA the names, positions, and e-mail addresses of all individuals who will have access to the PSFA-CIMS;
3. Have adequate computing hardware to run PSFA-CIMS;
4. Agree that use of this PSFA-CIMS software will not replace or change any contractual responsibilities; and,
5. Have installed Adobe Acrobat 7.0 or higher, pdf converter or equal; and,
6. Optionally have, but not required to have, as a benefit to sending images to the Contractor or Owner as an attachment (instead of faxing or mailing), an attached scanner and a digital camera minimum resolution of one (1) mega pixels.

   For PSFA-CIMS information on installation and use of the PSFA-CIMS or for scheduling training contact the PSFA-CIMS administrator at (505) 843-6272 or e-mail question to techsupport@nmpsfa.org and include PSFA-CIMS support in subject line.

11.23. Electronic Data – The Owner requires that Bid Documents, in their original form, are electronic files and that a set shall be provided to the Owner prior to Bid. Acceptable format for drawings shall be AutoCAD (.dwg) files and all other Specifications and Project Manual documents shall be Microsoft Word (.doc) or alternately Rich Text (.rtf) files with the exception that Submittals List that shall be Microsoft Excel (.xls) in Owner specified format.

ARTICLE 12: OPERATION AND MAINTENANCE

12.1. The design shall provide for ease of operation and maintenance and the ability to easily replace expendable building components such as lamps or filters and to repair, adjust or replace equipment are essential to the Project. The Design Professional shall endeavor to ensure that these services can be adequately performed after the Project is accepted by the Owner, and shall:

1. Specify easy access to building components or equipment that require frequent replacement or adjustment such as lamps, filters, motors, pumps or dampers;
2. Provide Construction Documents that accurately depict the installation locations for proper function and include all required sequencing or operating logic for intended functions;
3. Specify all equipment systems be appropriately identified and labeled to describe the capacities, flows, and other pertinent information related to their maintenance and safe operation;
4. Specify only equipment that can be readily maintained by the User or other qualified commercial repairmen who are proximate to the location of the Project
5. Provide adequate janitorial and maintenance storage space needs;
6. At the completion of the Schematic, Design Development, and Construction Document Phases, brief the Owner and the User Representative on the rationale for the selection of the major mechanical, electrical and lighting systems to be specified in the Construction Documents, together with their probable life-cycle costs if required by Other Conditions or Services (Part A of this Agreement).

ARTICLE 13: COMPENSATION

13.1. The Owner shall compensate the Design Professional for the Scope of Services provided in accordance with Article 7, Payments to the Design Professional, and other Terms and Conditions of this Agreement.

13.2. Payments for Basic Services as described in Paragraphs 2.1 through 2.7, and any other services included in Other Conditions or Services (Part A of Agreement) as part of Basic Services, shall be made monthly in proportion to services performed so that the compensation at the completion of each phase shall be as provided by this Agreement.

13.3. **ADDITIONAL SERVICES,** excluding consultants, shall be computed at the rate included in this Agreement. GRT will be added as a separate item in the payment request.

13.4. **ADDITIONAL SERVICES OF CONSULTANTS** required beyond Basic Services, including but not limited to additional structural, civil, landscape, interior design, mechanical, and electrical services, shall be computed by applying a multiple not to exceed of 1.10 times the amounts billed to the Design Professional for such services. The Design Professional shall provide to the Owner for approval, hourly rates for Consultants and their employees detailed by professional levels prior to incurring any liability for Additional Services. GRT will be added as a separate item in the payment request.

13.5. **REIMBURSABLE EXPENSES,** if allowed by this Agreement, shall be compensated at direct cost not to exceed allowance as defined in Part A of this Agreement, unless modified otherwise by written agreement.

ACKNOWLEDGEMENT OF RECEIPT OF GENERAL CONDITIONS

Signature Required

I hereby acknowledge receipt of the General Conditions of the Agreement between the Owner and the Design Professional, 2021 Edition, Version 3.2, Part B of Agreement.

Authorized Signature: _____ Date: _____

Title: _____

Firm Name: _____

APPENDIX NO. 1: ACKNOWLEDGEMENT OF RECEIPT FORM

RFP RFP#2023-004
Title: Architectural and/or Engineering Services

Please complete this form and return it to the District as soon as possible. Failure to return this form will not exclude a firm from submitting a proposal; however, only those prospective respondents who elect to return this form will receive notifications regarding the release of any addenda/amendments, if issued, and/or other information pertaining to this solicitation. The following information will be used for all correspondence related to this RFP.

Please print:

Business Name: _____

Business Contact Name: _____

Title: _____ Phone: _____

Email: _____ Fax: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

Please return completed form to:

Lisa Evans, CPO
3401 E. 30th St., Ste. A
Farmington, NM 87402
505.324.9840
levans@fms.k12.nm.us

APPENDIX NO. 2: RFP SUBMISSION CHECKLIST FORM

The purpose of this form is to guide the Offeror with its final submission to ensure all required items are included. The Offeror must include this appendix with its submission.

Tab 1 - Required Items – failure to include any of these items may result in your proposal being deemed non-responsive:

☐ Appendix No. 2 - RFP Submission Checklist Form
☐ Appendix No. 3 - Required Information Form
☐ Appendix No. 4 - Letter of Transmittal Form
☐ Appendix No. 5 - Acknowledgment of Scope of Work Form
☐ Appendix No. 6 - Conflict Of Interest, Non-Collusion and Debarment/Suspension Certification Form
☐ Appendix No. 7 - Campaign Contribution Disclosure Form
☐ Appendix No. 8 - Acknowledgment of Receipt of Addenda/Amendments Form
☐ One of the following valid New Mexico Preference Certificates: Resident Business, Native American Resident Business, Resident Veteran Business or Native American Veteran Business
☐ Certificate of Liability Insurance
☐ New Mexico Secretary of State Certificate of Organization
☐ Current W-9
☐ Any additionally required documents not included in the page count

Tab 2 - Mandatory Items - Response to Evaluation Criteria (maximum thirty (30) pages):

☐ Section 4.1.1.1. - Specialized Design and Technical Competence
☐ Section 4.1.1.2. - Capacity and Capability to Perform Work
☐ Section 4.1.1.3. - Past Record of Performance
☐ Section 4.1.1.4. - Proximity to or Familiarity with Site Location(s)
☐ Section 4.1.1.5. - New Mexico Produced Work
☐ Section 4.1.1.6. - Volume of Work (Table 1 and Table 2 in Attachment 1)

Tab 3 (Non-Mandatory Items):
Additional non-scored, non-required, informational items such as promotional documents, current professional licenses/certificates and resumes, etc.

SIGNATURE:

I hereby certify that the information which I have provided on this form is true and correct, and that all items whose boxes are marked are included in this RFP submission. I acknowledge that if my firm's RFP submission is missing any of the items detailed above in Tab 1 and Tab 2, the firm may be deemed non-responsive and will forfeit its submission.

SIGNED BY

Authorized Signature: _____ Date: _____

Printed Name, Title: _____

Firm Name: _____

APPENDIX NO. 3: REQUIRED INFORMATION FORM

The following items **MUST** have a response, failure to respond to all areas will result in your proposal being deemed non-responsive.

The Principal member or officer of the firm who will be responsible for the administration of the contract, including their email address and telephone number;

Principal Member/Officer Name:	
Principal Member/Officer Title:	
Principal Member Direct Email:	
Direct Telephone Number:	

Identify the business name, address, and telephone number of the office(s) where the work will be performed for the prime Offeror and all sub-consultants;

Principal Business Name:	
Doing Business As (dba):	
Telephone Number:	
Main Email Address:	
Alternate Email Address:	
Physical Address:	
Mailing Address:	

Indicate the type of firm: corporation, partnership, sole proprietor, joint venture or other;

☐ C Corporation	☐ S Corporation	☐ Individual/sole proprietor
☐ Limited liability company (LLC)	☐ Partnership	☐ Other
If Other was selected from above, please specify the type:		

State the year the firm was established, and any former names by which the firm was known;

Year Firm Established:	
Former Names:	
Mergers, Acquisitions:	

List all applicable business licenses your firm holds that are required by the State of New Mexico, including the license number and jurisdiction and the name of license holder exactly as it appears on file.

New Mexico Tax ID #	
New Mexico Secretary of State Business ID #	
Federal Data Universal Numbering System (D-U-N-S) #	

Provide the names and registration numbers of the New Mexico (NM) Registered Professional Architect/Engineer who will be in direct responsible charge of the work, including their email address and telephone number;

Name	License Type	NM Registration #	Expiration Date
1.			
2.			
3.			
4.			

Mailing Address	Telephone #	Email Address
1.		
2.		
3.		
4.		

Indicate whether or not the individual registration has ever been subject to disciplinary action by the Board of Examiners for Architects. If yes, include an explanation;

SIGNATURE:
This Appendix No.3: Required Information Form has been signed by a signatory with the authority to bind the Offeror. By signing this Signature Page, through the undersigned representative who has the authority to bind the Offeror, and by submitting a proposal in response to RFP # RFP#2023-004, the Offeror agrees to perform the services required by such RFP and to adhere to all requirements, specifications, terms and conditions of the RFP. Offeror further agrees to be bound by this proposal for a minimum of ninety (90) days from the date proposals were due. By signing this Signature Page, the undersigned representative is also acknowledging receipt of all addenda that may be issued in regards to said RFP.

SIGNED BY:

Authorized Signature: _____ Date: _____

Printed Name, Title: _____

APPENDIX NO. 4: LETTER OF TRANSMITTAL FORM

The following items **MUST** have a response, failure to respond to all areas will result in your proposal being deemed non-responsive.

1. Identity Business Name and Physical Address of the Offeror organization:

Offeror Business Name	
Physical Address	
City, State, Zip Code	

2. Offeror's Business Mailing Address if different than above:

Offeror Business Name	
Mailing Address	
City, State, Zip Code	

3. For the Person authorized by the organization to contractually obligate the organization:

Name	
Title	
Email Address	
Telephone	

4. For the person authorized to negotiate the contract on behalf of the organization:

Name	
Title	
Email Address	
Telephone	

5. For the person to be contacted for clarifications:

Name	
Title	
Email Address	
Telephone	

On behalf of the Offeror named in Item 1, the authorized Signatory named in Item 3 above commits and accepts the items below.

- The Offeror commits to comply with the ASHRAE Standard, ASHRAE/IES 90.1-2010, Energy Efficiency Design of New Buildings, and the New Mexico Energy Conservation Code. Per said code, Offeror's designs will incorporate water conserving fixtures.
- Offeror will comply with all requirements of the Americans with Disabilities Act of 1990 for work performed as a result of this RFP.
- Offeror accepts all Terms and Conditions governing this Procurement.
- The submission of Offeror's proposal constitutes acceptance of the Evaluation Factors contained in this RFP.
- Offeror acknowledges receipt of any and all addendum/amendments to this RFP.
- Offeror hereby certifies it meets all requirements of financial viability, responsibility and resources to complete all proposed activities within the period of performance as detailed in this RFP.

Authorized Signature: _____ Date: _____

Printed Name: _____

(Must be signed and dated by the person identified in Item #3, above.)

APPENDIX NO. 5: ACKNOWLEDGEMENT OF SCOPE OF WORK FORM

The Offeror, through the undersigned, hereby acknowledges that they understand the Scope of Work to be performed in Exhibit 1: Scope of Work, and that they have the capacity, capability, and past record of performance to perform the work. This page has been signed by a signatory with the authority to bind the Offeror. By signing this page, through the undersigned representative who has the authority to bind the Offeror, and by submitting a proposal in response to this RFP, the Offeror agrees to perform the services required by such RFP and to adhere to all requirements, specifications, terms and conditions of the RFP. Offeror further agrees to be bound by this proposal for a minimum of ninety (90) days from the date proposals were due.

This completed Acknowledgement must be included in the Offeror's Proposal with the Mandatory Specifications, Forms, Acknowledgements, all Appendices and Attachments, per Section 3.3.4.1.1.

Authorized Signature: _____ Date: _____

Printed Name: _____

Title: _____

Firm Name: _____

APPENDIX NO. 6: CONFLICT OF INTEREST, NON-COLLUSION AND DEBARMENT/SUSPENSION CERTIFICATION FORM

CONFLICT OF INTEREST

As utilized herein, the term "Vendor" shall mean that entity submitting a proposal to Farmington Municipal Schools (District) in response to the above referenced bids/request for proposals.

The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge:
No employee or board member of District (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any District employee, board member or close relative, with the exception of the person(s) identified below. Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Vendor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Vendor, please identify the legislator: _____.
List below the name(s) of any District employee, board member or close relative who now or within the preceding 12 months (1) works for the Vendor; (2) has an ownership interest in the Vendor (other than as an owner of less than 1% of Vendor's stock, if Vendor is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Vendor; (4) has received grant, travel, honoraria or other similar support from Vendor; or (5) has a right to receive royalties from the vendor.

CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity. Does vendor agree?
YES – Initials of Authorized Representative of Vendor: _____

DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body, or in receipt of a notice or proposed debarment from any Federal or State agency or local public body. The vendor agrees to provide immediate notice to District's Purchasing Department in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal government, or any agency of local public body of the State of New Mexico, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST, NON-COLLUSION, and DEBARMENT/SUSPENSION STATUS requirements, and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named and that the information contained in this document is true and accurate to the best of their knowledge.

Signature: _____ Date: _____

Name of Person Signing (typed or printed): _____

Title: _____

Email: _____

Name of Company (typed or printed): _____

Address: _____City, State, Zip Code: _____

APPENDIX NO. 7: CAMPAIGN CONTRIBUTION DISCLOSURE

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The Prospective Contractor must disclose whether they, a family member or a representative of the Prospective Contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the Contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the Prospective Contractor, a family member or a representative of the Prospective Contractor to the public official exceeds Two Hundred Fifty dollars ($250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a Prospective Contractor, a family member of the prospective Contractor, or a representative of the Prospective Contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a Prospective Contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"**Applicable public official**" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the Prospective Contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"**Campaign Contribution**" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to federal, statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"**Family member**" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law, or son-in-law.

"**Pendency of the procurement process**" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"**Person**" means any corporation, partnership, individual, joint venture, association, or any other private legal entity.

"**Prospective Contractor**" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

"**Representative of a Prospective Contractor**" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the Prospective Contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

_____

Signature Date

_____

Title (position) Offeror Business Name

– OR –

ONLY SIGN WHERE APPLICABLE

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS ($250) WERE MADE to an applicable public official by me, a family member or representative.

_____

Signature Date

_____

Title (position) Offeror Business Name

APPENDIX NO. 8: ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA/AMENDMENTS

I hereby attest that I have received the following addenda/amendment(s) to the RFP _____ as follows:

ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____
ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____
ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____
ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____
ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____
ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____
ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____
ADDENDUM #:	_____	DATE:	_____	AMENDMENT #:	_____	DATE:	_____

Authorized Signature: _____

Printed Name: _____

Title: _____

Firm Name: _____

ATTACHMENT NO. 1: PROJECT/CONTRACT LISTING FORM
TABLE 1 and TABLE 2

Offerors must complete Table 1 and Table 2.

Offeror shall list all current contracts with the District containing similar work(s) to the scope of work as contained in the RFP.

FIRM: _____ **DATE:** _____

Table 1 – Project Specific Contracts

	PROJECT DIRECTLY AWARDED TO FIRM	AWARD DATE	CONTRACT DATE	CONTRACT AMOUNT (in dollars $)	CONTRACT REMAINING BALANCE (in dollars $)	% WORK COMPLETE
1.						
2.						
3.						
4.						
5.						
TOTAL FEES:						

Notes:
1. See table of calculation of "75% Complete" in Section **5. EVALUATION**.
2. If any award is not proceeding in contract negotiations, please indicate the status in the REMARKS area below.
3. Fees do not include reimbursable expenses, which include travel, per diem, printing, telephone or reproduction costs.
4. Federal funds shall be included in project calculations pursuant to § 13-1-120B (6).
5. If any Award of Contract that has not resulted in a written contract offer to the Offeror within 6 months of written notice, shall not be considered an award for the purposes of this Project Listing Form.
6. Use additional sheets if necessary.

REMARKS:

Table 2 – On-Call Contracts

	PROJECT DIRECTLY AWARDED TO FIRM	CONTRACT DATE	CONTRACT AMOUNT (in dollars $)	TOTAL AMOUNT TASKED OUT TO DATE (in dollars $)	% OF TASKED OUT WORK COMPLETE TO DATE	TOTAL TASKED OUT WORK EXPENDED TO DATE (in dollars $)	TOTAL REMAINING BALANCE OF TASKED OUT WORK (in dollars $)
1.							
2.							
3.							
4.							
5.							
		TOTALS:					

Notes:

6 See table of calculation of "75% Complete" in Section **5. EVALUATION**.

7 If any award is not proceeding in contract negotiations, please indicate the status in the REMARKS area below.

8 Fees do not include reimbursable expenses, which include travel, per diem, printing, telephone or reproduction costs.

9 Federal funds shall be included in project calculations pursuant to § 13-1-120B (6).

10 If any Award of Contract that has not resulted in a written contract offer to the Offeror within 6 months of written notice, shall not be considered an award for the purposes of this Project Listing Form.

11 Use additional sheets if necessary.

REMARKS:

ATTACHMENT NO. 2: REFERENCES
See Paragraph 4.1.1.3.3.

Offeror, include this page with Proposal

The District, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror's experience relevant to the scope of work in an effort to establish Offeror's responsibility.

Offeror, list below the names of the businesses from whom a Reference Questionnaire is being requested. Include this page in your proposal.

	Business Name	Contact Name	Contact Email Address
1.			
2.			
3.			
4.			
5.			

The Business Reference, in turn, is requested to submit the completed Reference Questionnaire (one per reference) via email directly to:

Name: Lisa Evans
Procurement Manager
Farmington Municipal Schools
Email: levans@fms.k12.nm.us
Phone: 505.324.9840

The Reference forms must be submitted by 2/14/2023 for inclusion in the evaluation process. The form with information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

Farmington Municipal Schools
RFP RFP#2023-004

Reference Request Regarding:

_____

Offeror Business Name

Hello,
This form is being submitted to your company for completion as a business reference for the company listed above.

This form must be returned no later than 2/14/2023**,** and **must not** be returned to the company requesting the reference. Return the form to Farmington Muncipal Schools (District) to the following email address:

Email: levans@fms.k12.nm.us
Name: Lisa Evans
Procurement Manager
Farmington Municipal Schools
Phone: 505.324.9840

For questions or concerns regarding this form, please contact the District Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

Company providing reference:	
Contact name and title/position:	
Contact telephone number:	
Contact Email address:	
Project description:	
Project dates (starting and ending):	
Project this reference is regarding:	

REFERENCE QUESTIONNAIRE **RFP RFP#2023-004**

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?
   COMMENTS:

2. How would you rate this firm's knowledge and expertise?
   ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
   ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
   _____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?
   _____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

6. Who were the vendor's principal representatives involved in your project, and how would you rate them individually? (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

   Name: _____Rating: ____

   Name: _____Rating: ____

   Name: _____Rating: ____

   Name: _____Rating: ____

   Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?
   COMMENTS:

7. How satisfied are you with the products developed by the vendor?
   ____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
   COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?
   COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?
   COMMENTS:

10. Would you recommend this vendor's services to your organization again?
    COMMENTS: