

**New Mexico
Public Schools Insurance Authority**



**Board of Directors
Special Meeting
August 14, 2024**



New Mexico Public Schools Insurance Authority

Board of Directors Meeting

Board of Directors

- Al Park, President, Governor Appointee
- Chris Parrino, Vice President, NM Association of School Business Officials
- Trish Ruiz, Secretary, Educational Entities at Large
- Denise Balderas, Governor Appointee
- Vicki Chavez, NM Superintendents Association
- Tim Crone, American Federation of Teachers NM
- Pauline Jaramillo, NM School Boards Association
- Bethany Jarrell, National Education Association - New Mexico
- K.T. Manis, Public Education Commission
- David Martinez, Jr., National Education Association - New Mexico
- Sammy J. Quintana, Governor Appointee

Special Virtual Meeting

Please join my meeting from your computer, tablet or smartphone.

<https://us02web.zoom.us/j/87624061349>

You can also dial in using your phone.

United States: [+1 253 215 8782](tel:+12532158782)

Access Code: [876 2406 1349](https://us02web.zoom.us/j/87624061349)

Wednesday, August 14, 2024

4:00 p.m.

Agenda

Draft

- | | |
|---|-------------|
| 1. Call to Order | A. Park |
| 2. Roll Call | C. Roybal |
| 3. Introduction of Guests | P. Sandoval |
| 4. Citizens to Address the Board (Five-Minute Limit) | A. Park |
| 5. Approval of Agenda (Action Item) | A. Park |

6. Administrative Matters
 - A. Election of Officers **(Action Item)** M. Esquivel
 - B. Approval of New Mexico Military Institute to Join Risk Program **(Action Item)** P. Sandoval
 - C. Approval of Capital Asset Valuation Services Contract **(Action Item)** P. Sandoval
 - D. 2024 Workers Compensation Conference October 15-17, 2024 Las Vegas, NV **(Action Item)** P. Sandoval
7. General Discussion A. Park
8. Next Meeting Date and Location: Thursday, September 5, 2024
Location: Poms & Associates, 201 3rd Street, Suite 1400 and a Virtual Option **(Action Item)** A. Park
9. Adjournment **(Action Item)** A. Park

STATE OF NEW MEXICO

NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY

PROFESSIONAL SERVICES CONTRACT # 342-2025-05

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Public Schools Insurance Authority (NMPSIA)**, hereinafter referred to as the “Authority,” and [REDACTED] hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Authority.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall perform the following work:

The Contractor shall provide property insurance appraisal services for both real and personal property, for the Authority’s use in connection with its internal analysis of its insurance needs (the “Services”). The Contractor’s analysis will be dated as of the last date of the Contractor’s site inspection. The Contractor’s opinion is intended to assist the Authority in making informed business decisions; it is not a recommendation. Any decisions relating to insurance coverage shall remain the Authority’s responsibility and made solely at its discretion. The Authority requires the Contractor to personally inspect and measure each structure and building. The Authority does not want to provide the current appraisal to the Contractor simply to verify measurements. The Contractor must meet all applicable State and Federal regulations and laws applicable to proper asset valuation practices.

The Services to be performed are outlined below. The engagement includes the following:

- A. The Contractor, through completion of the Services contemplated in this Agreement, will:
 1. Provide a database of buildings that are vacant, abandoned, or unoccupied,
 2. Provide both Earthquake and Flood zones for each Building or Location, whichever is more appropriate
 3. Provide Fire Protection Ratings for each Location
 4. Provide a map of Brush Hazard areas for each Building or Location, whichever is more appropriate
 5. Provide information regarding if firefighters are paid or volunteer
 6. Determine the concentration of employees (workers’ compensation carrier requirement) for each building
 7. If furnished by Authority Members provide an inspective report for leased buildings
 8. Provide total insured values for real and personal property values.

B. The scopes of Services to be provided are as follows:

1. Valuation

- A. Reproduction Cost New - In developing reproduction costs that are realistic, consideration will be given to labor, materials, and manufactured equipment, plus the indirect costs for architect's fees, contractor overhead, profit, fees, inspection fees, sales tax, insurance, and other incidentals.
- B. Depreciated Reproduction Cost - Accrued depreciation, reflecting physical deterioration, utility, and obsolescence, will then be deducted from the reproduction cost to arrive at the Depreciated Reproduction Cost.
- C. Exclusions and Insurable Value - When computing Insurable Values, the value of items specifically excluded from coverage, per the present insurance policy, will be deducted to arrive at Replacement Insurable Value and Depreciated Insurable Value (Actual Cost Value).

C. Data Recording

- 1. The measurement and description of all buildings, portables, and structures will be recorded in detail as to create and support future reevaluation and proof of loss reports.
- 2. Recording construction data will include types of construction materials, dimensions, appurtenances, occupancy and use, fire underwriters' classification, and insurance exclusions.
- 3. All field notes taken as part of the appraisal will remain in file with the appraiser, but will be available to the Authority upon request, at no additional cost. In addition, if the Authority is challenged to substantiate an insurance claim, these reports will be furnished to the Authority at no cost.
- 4. Data must be recorded in a computerized information system that can be utilized on the existing computer system presently being used by the Authority's Broker/Consultant and which can be tailored to be used in a Excel, or another acceptable spreadsheet format. Once a year, copies of data will be submitted by Contractor to the Authority's Broker/Consultant; these will be furnished at no charge.
- 5. A flexible report generator that can sort data in multiple ad-hoc report formats to meet the needs of the Authority. Sorts must be accessible by:

6. Campus location or site (must include the name of building/structure and address)
 - A. School District
 - B. Occupancy
 - C. Construction of building, walls, and roof
 - D. Provide what County the building is located in
 - E. Individual buildings
 - F. Major firewall
 - G. Minor firewall
 - H. Authority
 - I. Square footage
 - J. Number of Floors
 - K. Number of buildings by Authority Members
 - L. Number of portables by Authority Members
 - M. Age-actual or estimated
 - N. Vacancy, abandoned or unoccupied status (must be specified clearly in the report)
 - O. Automatic sprinklered (Y/N)
 - P. Intrusion alarm (Y/N)
 - Q. Fire hydrant within 500 feet (Y/N)
 - R. Distance to a fire station
 - S. State whether the fire department is a volunteer or not
 - T. Provide Fire Protection Ratings
 - U. Provide a map of Brush Hazard Areas
 - V. Provide what flood zone the building is located in
 - W. Provide what earthquake zone the building is located in
 - X. Has the building been retrofitted for an earthquake?
 - Y. Any mix of defined sort variables
 - Z. Provide the Protection Class for each location
 - AA. Identify all ancillary facilities, such as Sewage Treatment Plants, Water Treatment Plant, etc.
 - BB. Number of employees in each building (concentration of risk)
 - CC. Identify any ingress or egress issues
 - DD. Identify if there is a swimming pool (provide length, depth and if there is a diving board and if so, what is the height)
 - EE. Identify if there is a stadium and describe the size, purpose, spectator capacity, press box, etc.

7. Provide appropriate costing methodology either through direct costing or through normal costing based on the current cost of replacing equipment new.

8. Electronic copy of reports providing information regarding the methodology used in compiling data to provide assurance that the techniques utilized are consistent with generally accepted accounting principles (GAAP).

9. Certification of values of inventory appraisals.
10. Provide appraisal reports to include Property Accounting Summary by member, property accounting ledger report by member, detailed insurance and property record report by member.
11. Provide data in a computerized format delineated by Member for downloading in Member files in an appropriate format (Excel, Access, or CSV file).

D. Appraisal Reports & Final Deliverables (the “Reports” and “Final Deliverables”)

1. Contractor’s reports that are issued at the conclusion of the projects are prepared in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). The summary appraisal report represents a summary discussion of the data, reasoning, and analyses used in the appraisal process to develop the Contractor’s opinion of value. Supporting exhibits include building details, photographs, and related construction, occupancy, protection, and exposure (COPE) data. The Contractor also provides trend analysis services that provide updated insurable values on an annual basis based on the original inspection and appraisal. The Contractor will also provide the Authority with access to the Contractor’s web-based reporting system. With this system, Authority reports and data will be accessible via the Internet, allowing the Authority to view, sort, and extract information into an Excel file or special management reports.
2. The Authority will receive a full complement of reports with, a PDF file, an Excel file, and access to the Contractor’s proprietary web-based reporting system.
3. The Final Deliverables and Reports and exhibits will include:
 - A. Summary Appraisal Report – Narrative report intended to comply with the reporting requirements set forth by (“USPAP”) for a Summary Appraisal Report. As such, the report will present only summary discussions of the data, reasoning, and analyses used in the appraisal process to develop the Contractor’s opinion of value. Supporting documentation concerning the data, reasoning, and analyses will be retained as a part of our work papers. The depth of discussion contained in the report will be specific to the Authority’s needs and purpose. The Contractor is not responsible for the unauthorized use of its report.
 - B. Statement of Insurable Values Exhibit – Displays description of fields being summarized, and cost of reproduction new by location.

- C. Inspection and Appraisal Exhibit – Represents a listing of building Construction Occupancy, Protection and Exposure (COPE) data, fixed equipment details, and photographs for each property. The following information will be provided for each building: Site & Building Designation, Address, Year Built, ISO, Classification, Square Feet, Story Height, Number of Floors, Wall Type, Roof Pitch, Heating, Cooling, Entry Alarm, Fire Alarm, Cost of Reproduction New, Additional Features, GPS coordinates.
 - D. Exposure Summary Exhibit – This report includes a breakdown of the replacement cost for buildings and contents exposure by ISO Code Summary (frame, joisted masonry, non-combustible, masonry non-combustible, modified fire resistive and fire resistive), as well as exposure by value summary (\$0 to \$1m, over \$1m, over \$5m, over \$10m, over \$20m, over \$30m and totals). The top five largest Authority Members and largest buildings values are also indicated in the report.
- E. Reports
- 1. Reports will consist of the following:
 - A. A plot plan for each site-currently achieved by an aerial map
 - B. A color photograph of each structure
 - C. A summary report with each building listed with the respective values to be reported
 - D. The data summary sheet will include the following information for each building
 - 2. Narrative description to include:
 - A. Square footage
 - B. Number of floors
 - C. Year built actual or estimated
 - D. Construction and the condition of the structure
 - E. Discussion of major components as applicable as identified in III.d.1
 - 3. On an annual basis, the Authority’s Broker/Consultant may require the following reports:
 - A. List of all buildings in excess of \$500,000
 - B. List of all buildings in excess of \$1,000,000
 - C. List of all buildings in excess of \$5,000,000
 - D. List of all locations in excess of \$1,000,000
 - E. List of all locations in excess of \$5,000,000
 - F. List of all locations in excess of \$15,000,000
 - G. Alphabetical listing of values by Authority Member, including totals
 - H. Alphabetical listing of construction type and values by district, including totals
 - I. List of all vacant, abandoned or unoccupied buildings

- J. Reports will be provided online and electronically at no charge.
- K. The original appraisal, color pictures of each building, plot plans and all required structure data, will need to be provided in triplicate. One copy will be provided for NMPSIA, one for the District, and one for the Broker/Consultant.
- L. All renewal update reports will need to be provided in triplicate. Each member will be provided with a hard copy valuation report which will allow the opportunity for appeals to valuations.

F. Annual Updates

- 1. The annual updates will be completed by January 1st, if requested.

G. Insurance requirements

- 1. Maintain at all times professional liability (errors and omissions) insurance in the minimum amount of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.
- 2. Maintain at all times Workers' Compensation Insurance and Employer's Liability, meeting all statutory obligations. If the Contractor plans on employing any subcontractors, independent contractors, or volunteers, the Contractor agrees that all related workers' compensation benefits will be provided to them.
- 3. Maintain at all times General and Automobile Liability insurance in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Automobile Liability insurance in the minimum of \$1,000,000 combined single limit (CSL), per occurrence. The contractor will name the Authority as an additional insured.
- 4. A certificate of Insurance is required to be submitted to the Authority confirming the above.

2. Compensation.

- A. The Authority shall pay to the Contractor in full payment for services satisfactorily performed at the rate of One Hundred Twenty-Five Dollars (\$125) per structure.
- B. If trending is elected per fiscal year the annual amount shall be (\$7,200) in FY26 (\$7,600) in FY27 and (\$8,000) in FY28.
- C. The Authority has elected the Betterview Roof Exposure Report and shall pay the Contractor \$25.00 per structure at the Authority's request.

D. The Contractor shall at no cost to the Authority provide one annual Origami software license.

E. Payment in Fiscal Year 2025, 2026, 2027, and 2028 is subject to the availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work and to approval by the Authority. All invoices MUST BE received by the Authority no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

F. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Authority finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Contractor may take to provide remedial action. Upon certification by the Authority that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Authority shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE AUTHORITY with a start date of **July 1, 2024**. This agreement shall terminate on **June 30, 2028** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. **Termination.**

A. Grounds. The Authority may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Authority's uncured, material breach of this Agreement.

B. Notice; Authority Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Authority shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Authority written notice of termination at one hundred and eighty (180) days prior to the intended date of termination, which notice shall (i) identify all the Authority's material breaches of this Agreement upon which the termination is based and (ii) state what the Authority must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Authority does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Authority does not,

within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Authority; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Authority's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AUTHORITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

D. Termination Management. Immediately upon receipt by either the Authority or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Authority; 2) comply with all directives issued by the Authority in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Authority shall direct for the protection, preservation, retention or transfer of all property titled to the Authority and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Authority upon termination and shall be submitted to the Authority as soon as practicable.

5. **Appropriations.**

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

6. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Authority and are not employees of the State of New Mexico.

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

7. **Assignment.**

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

8. **Subcontracting.**

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

9. **Release.**

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

10. **Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Authority.

11. **Product of Service -- Copyright.**

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

12. **Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10,

Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Authority employee while such employee was or is employed by the Authority and participating directly or indirectly in the Authority's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Authority's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Authority.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Authority relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Authority if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed

circumstances, in addition to other remedies available to the Authority and notwithstanding anything in the Agreement to the contrary, the Authority may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

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

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

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Records and Financial Audit.

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

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Authority from third-party claims, including reasonable attorneys' fees to the extent arising from the negligence of willful misconduct of the Contractor, its officers, employees, servants, subcontractors or agents resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Authority, the Authority shall, as soon as practicable but no later than ten (10) days after it receives notice thereof, notify the general counsel of the Contractor via electronic mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage.

22. Invalid Term or Condition.

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

23. Enforcement of Agreement.

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

24. Notices.

Any notice required to be given to either party by this Agreement shall be in writing via electronic mail as follows:

To the Authority:

New Mexico Public School Insurance Authority

410 Old Taos Highway

Santa Fe, NM 87501

Patrick Sandoval

Patrick@psia.nm.gov

Cc: Charlette Probst

Charlette.Probst@psia.nm.gov

To the Contractor:

[REDACTED]

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to

bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

26. Incorporation by Reference and Precedence.

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any Authority response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

27. Succession.

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

28. Contractor Personnel.

A. Key Personnel. The Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Authority. Key personnel are those individuals considered by the Authority to be mandatory to the work to be performed under this Agreement. Key personnel shall be agreed upon by both the Authority and the Contractor.

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, qualifications and experience. If the number of Contractor's personnel assigned to the Authority is reduced for any reason, Contractor shall, replace with the same or greater number of personnel with equal ability, experience, and qualifications.

29. Arbitration.

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 et seq, in Santa Fe, New Mexico.

30. Non-Collusion

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Authority.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Authority below.

New Mexico Public Schools Insurance Authority

By: _____
NMPSIA, Board President

Date: _____

(CONTRACTOR)

By: _____
