

AMENDMENT NUMBER 1

(June 19, 2020)

REVISED (06/19/20)
REQUEST FOR PROPOSALS (RFP)
Architectural Services
RFP #2020-002

Mission Achievement and Success Charter School
1718 Yale Blvd. SE
Albuquerque, New Mexico 87106
MAS Website: <https://www.maspublicschools.com>

The purpose of this amendment is remove and replace the original RFP document (June 5, 2020 posting) in its' entirety replace it with the following *"Revised (6/19/20) Request For Proposal, Architectural Services RFP#2020-002"*.

DEADLINE FOR RECEIPT OF PROPOSALS IS AS FOLLOWS:

DATE: July 16, 2020

TIME: 10:00 AM MDT

The date and time received will be stamped on the proposals by the District offices. Late Proposals will not be accepted. It is the responsibility of the Offeror to ensure that proposals are delivered on time to the correct address.

REVISED (06/19/20)

REQUEST FOR PRPOSALS (RFP)
Architectural Services
RFP #2020-002

Mission Achievement and Success Charter School
1718 Yale Blvd. SE
Albuquerque, New Mexico 87106

ORIGINAL RFP Release Date: June 5, 2020

DEADLINE FOR RECEIPT OF PROPOSALS IS AS FOLLOWS:

DATE: July 16,2020

TIME: 10:00 AM MDT

DELIVER TO: Mission Achievement and Success Charter School
1718 Yale Blvd SE
Albuquerque, New Mexico 87106

The date and time received will be stamped on the proposals by the Mission Achievement and Success Charter School main office. Late Proposals will not be accepted. It is the responsibility of the Offeror to ensure that proposals are delivered on time to the correct address.

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The Mission Achievement and Success Charter School is requesting proposals to select an architectural firm to perform and provide the professional design services as outlined within attached Appendix A, “**Owner and Design Professional Agreement**” and **adhere to the following requirements.** The project is on a tight schedule. It is the desire and goal of the Mission Achievement and Success Charter School to have design and construction drawings completed by November, 2020 for permit submission to the County, with the intent to provide them to the real estate developer that the MAS Charter School Educational Foundation is in “Build to Suit” negotiations for the acquisition of the completed project for the benefit of the School. It is the goal to have the construction begin at the first of the year, 2021.

Earlier this year, the Mission Achievement and Success Facilities Planning Committee engaged an architect to perform a preliminary program and schematics to determine the feasibility of the proposed site. Based on this preliminary planning the Foundation and has initiated negotiations for a Build to Suit real estate agreement. The programming document (see Exhibit G) has outlined about 75,000 sf which is not final yet. The Schematic Design Documents should be complete by June 30th. Please note that the successful Offeror may, but shall not be required to, utilize these preliminary documents. Offerors shall be unencumbered to revise, update, modify, amend and/or replace the preliminary documents.

Existing Information -Copies of project-related information in the possession of the Owner will be available to the Contractor subsequent to contract execution.

All potential Offerors are encouraged to read this Request for Proposals carefully, especially mandatory requirements.

B. BACKGROUND SUMMARY

Mission Achievement and Success Charter School (“MAS”) is a K-12 charter school founded in 2011 and is currently located on two campuses located at 1718 Yale Boulevard SE and 1255 Old Coors Road SW in Albuquerque, NM. MAS is finalizing negotiations with a real estate development firm to construct a new K-8 educational and administrative building at the 1255 Old Coors Road SW campus consisting of multiple one-story buildings totaling approximately 60-75,000 square feet. When completed, the new ground-up buildings will accommodate a student capacity of 900 students. Ultimately, MAS’ K-12 West campus will serve 1,600 students and house students in 40-45 classrooms, gymnasium, cafeteria, administrative space, playgrounds, playing fields, outdoor basketball courts and surface parking (see Exhibit G).

C. SCOPE - ARCHITECTURAL SERVICES

Mission Achievement and Success Charter School is soliciting to retain a licensed New Mexico architect to assist the School in providing a comprehensive set of design services based on the following deliverables:

The selected provider will provide all Architectural Services to achieve the following mission:

- Coordination and documents for Entitlements
- Review, Update and/or Revise Preliminary Program documents (See Exhibit G),
- Space Programming Analysis
- Schematic Design Documents

- Design Development Documents
- Construction Documents (Including MEP, Structural, Landscape Design, Site Lighting and coordination with project Civil Engineer)
- Site Plan preparation
- Assistance with general contractor bidding
- Permitting with Bernalillo County/State Building Department
- Architectural Construction Administration including attendance at Developer's weekly onsite construction meetings
- Final Close-out with governmental agency
- 11 month Warranty Inspection

The project team shall include as a minimum Architectural, Engineering, and any other design consultants as may be required.

Project shall be designed in compliance with Section 15-3-36, Energy Efficiency Standards for Public Buildings, NMSA 1978 and qualify for the Environmental Protection Agency's (EPA) ENERGY STAR®. The ENERGY STAR special application graphic, which denotes on the final contract document drawings that the estimated energy use is intended to be in the top 25% as compared to the U.S. building stock, shall be applied. Once the project is complete and operating for at least one year, it shall qualify to receive the ENERGY STAR plaque in accordance with the rules and procedures of the ENERGY STAR program. See Appendix A, Owner and the Design Professional Agreement, for more detailed contract requirements.

Electronic Data – The Owner prefers that final design documents and specifications are prepared using computer technology. Electronic drawing files should be provided to the Owner in AutoCAD and specifications in Microsoft Word.

ESTIMATED PROJECT MACC: \$14,000,000

ESTIMATED DESIGN FEE: 6.5% of MACC – Reference Exhibit A PSFA PreK-12 Design Professional Fee Schedule). Note: Design fees exclude reimbursable expenses and gross receipts taxes.

Actual A/E fees are to be negotiated, based upon specific scope of services, reimbursable, specific contract requirements and available funding. The Owner intends to negotiate with the selected firm to identify the critical calendar dates for completion of design work

NOTE: All projects are subject to the availability of funds.

D. PROJECT CONTACTS

Any questions concerning this Request for Proposals should be submitted in writing no later than June 29, 2020 to the Chief Procurement Officer listed below.

JoAnn Mitchell
1718 Yale Blvd SE
Albuquerque, New Mexico 871
Joann.mitchell@mascharterschool.com

E. DEFINITION OF TERMINOLOGY

This paragraph contains definitions that are used throughout this Request for Proposals (RFP), including appropriate abbreviations.

1. **“Award of Contract”** shall mean a formal written notice by the Mission Achievement and

Success Charter Schools that a firm has been selected to enter into a contract for services. 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 the Project Listing Form.

2. **"MAS"** means the Mission Achievement and Success Charter School.
3. **"Contract"** means an agreement for the procurement of items of tangible personal property or services. "Contractor" shall mean RFP Awardee.
4. **"Contractor"** means successful Offeror awarded the contract.
5. **"Determination"** means the written documentation of a decision by the Chief Procurement Officer, including findings of fact required supporting a decision. A determination becomes part of the procurement file to which it pertains.
6. **"Design Professional"** means architect/engineer.
7. **"Desirable"** means the terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor.
8. **"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.
9. **"Entity"** means the MAS for the purposes of Section 13-1-120(B), (6) NMSA 1978; Evaluation Criteria; and is the entity requesting proposals.
10. **"Evaluation Committee"** means a body appointed by MAS management to perform the evaluation of all responsive proposals.
11. **"Evaluation Committee Report"** means a report prepared by the Chief Procurement Officer and the Evaluation Committee for submission to the MAS Foundation Board for contract award that contains all written determinations, resulting from the conduct of a purchase, requiring the evaluation of competitive sealed proposals.
12. **"Finalist"** is defined as an Offeror who meets all the mandatory specifications of the Request for Proposal (RFP), and whose score on evaluation factors is sufficiently high, to qualify that Offeror for further consideration by the Evaluation Committee.
13. **"MACC"** means the maximum allowable construction cost as defined by the Design Professional contract.
14. **"Mandatory"** means the terms "must", "shall", "will", "is required", or "are required" identify a mandatory item or factor. Failure to meet a mandatory item will result in the rejection of the Offeror's proposal.
15. **"Offeror"** is any person, corporation, or partnership that chooses to submit a proposal.
16. **"Owner"** is **Mission Achievement and Success Charter Schools**.
17. **"Project Listing Form"** means the form included as a part of this RFP which all Offerors shall complete, indicating all outstanding awards and contracts less than 75% complete.
18. **"Proposal"** is the Offerors response to this RFP.
19. **"Request for Proposal" or "RFP"** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
20. **"Resident Business", "Resident Contractor", or "Veteran Business, Veteran Contractor"** means an entity that has a valid resident certificate issued by the NM Taxation and Revenue Department pursuant to Section 13-1-21 and 13-1-22 NMSA 1978
21. **"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.
22. **"Responsive Proposal" or "Responsive Offer"** means a proposal, or an offer, which conforms in all material respects to the requirements set forth in the request for proposal. Material respects

of a request for proposal includes, but are not limited to, price, quality, quantity or delivery requirements.

23. **"Selection Committee"** means a body constituted in accordance with Section 13-1-121 NMSA 1978 to perform the evaluation of Offeror proposals.
24. **"User"** means the MAS staff occupying the facility or facilities, for which a project is being designed.
25. **"User Contact"** is the person designated by the MAS to speak on behalf of the staff concerning the scope of work and programming requirements for the project.
26. **"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.
27. **"Veteran Preference"** – See 'Resident Business, Resident Contractor or Veteran Business, Veteran Contractor definition above.
28. **The terms "must," "shall," "will," "is required," or "are required"** identify a necessary item or factor. Failure to comply with such an item or factor may result in the rejection of the Offerors proposal.
29. **The terms "can," "may," "should," "preferably," or "prefers"** identifies a desirable or discretionary item or factor. Failure to comply with such an item or factor may result in the rejection of the Offerors proposal. Rejection of the proposal will be subject to review by the Selection Committee and the final decision on rejection will be made by the Committee Chairman.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP outlines and describes the major events of the Selection Process and specifies general requirements.

A. SEQUENCE OF EVENTS

1. Issue RFP: **June 5, 2020**
2. Post Revised RFP Solicitation **June 19, 2020**
3. **Due date for Question submittals: June 29, 2020**
4. RFP Submittal Due Date & Time: **July 16, 2020 10:00 AM MDT**
5. Proposal Evaluation: **July 17-20, 2020 (Tentative)**
6. Interviews with Finalists: **TBD**
7. Contract Negotiations: **TBD**
8. Notice of Award: **August 1, 2020**

B. EXPLANATION OF EVENTS

1. **Issue RFP** - This RFP is issued by the MAS in accordance with the provisions of Sections 13-1-120 and 13-1-121 NMSA 1978.
2. **Questions/Clarifications/Site Visits** - Between the time of issuance of the RFP and the submission deadline, prospective Offerors are directed to submit any questions or request for clarification they may have by the established question submittal due date and time (June 29,2020). Any and all questions are

to be submitted in writing to the Chief Procurement Officer.

3. RFP Amendments - Should any amendment to this RFP be deemed necessary between issuance of the RFP and the proposal submission deadline, it will be distributed in writing to all recipients of the original RFP. If an amendment requires a time extension, the proposal submission date will be changed as part of the written amendment.
4. Submission of Proposal - This is the date and time that has been set for the submission of Proposals. Late Proposals will be determined to be non-responsive and will not be accepted. It is the Offeror's responsibility to ensure that Proposals arrive by the appointed date and time. Proposals may be delivered early to avoid any possible delay of the submission. The documents shall be in a sealed container with the RFP number and opening date indicated on the bottom left hand side of the container as follows (See Section II.A. for submittal time and date deadline):

Mission Achievement and Success Charter Schools
1718 Yale Blvd SE
Albuquerque, New Mexico 87106
RFP#: 2020-002

5. Receipt of Proposal Submittals -MAS staff will time-stamp proposals at the MAS main office. A public log will be kept of the names and submittal times of all Offerors who submitted proposals.

Proposals will be reviewed, for completeness and compliance with requirements, by the Selection Committee, or designee. If any proposal submitted is deemed non-responsive, the Offeror will be notified in writing of such determination and the method of protesting that determination (see Section II.C.1.).

6. Proposal Evaluation/Short listing - The Selection Committee will review each Offerors proposal. Points will be allocated, by each member, as outlined in Section V of this RFP.
7. Notice of Finalists - Each responsive Offeror will be notified in writing as to the results of the short listing. This notice will include the overall rankings awarded by the Selection Committee for all proposals submitted and will note firms selected for interview. A public log will be kept of the names and overall rankings of all Offerors shortlisted for interviews.
8. Interviews with Finalists - For those proposals selected for interview, notices to finalists will include the interview date and time. The interview location will be determined at the discretion of the Selection Committee.
9. Contract Negotiations - The Owner and the successful Offeror will begin contract negotiations as soon as possible after notice of award. Final DESIGN PROFESSIONAL fees shall be determined during contract negotiations and depend on such factors as project size and complexity as related to Exhibit A: Architect Fee Schedule (PSFA PreK-12 Design Professional Fee Schedule). If contract negotiations are not finalized within a reasonable period of time the Owner will conclude negotiations with the selected firm and begin negotiations with the next ranked firm based on final ranking.
10. Notice of Award - MAS will notify finalists in writing of the final award. This notice will include the interview rankings of firms and the final combined rankings for the project award. At this time, all proposals that were submitted are available for public inspection.

C. GENERAL REQUIREMENTS

The General Requirements section contains specific information about the process and conditions under which this RFP is issued and conditions concerning how the project will be completed.

1. Protests - In accordance with Section 13-1-172 NMSA 1978, any Offeror who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer. The protest must be submitted **in writing** within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest to:

JoAnn Mitchell
Founder/Principal
Mission Achievement and Success Charter School
1718 Yale Blvd. SE
Albuquerque, New Mexico 87106

Protests must include the name and address of the protestant, the solicitation number, and a statement of grounds for protest, including appropriate supporting exhibits. Protests received after the deadline will not be accepted.

2. Incurring Cost - Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
3. Subcontractors - All work that may result from this procurement must be performed by the contractor and payments will only be made to the contractor. Use of consultants identified in the proposal is permitted, but since the award is made on a quality-based evaluation process, sub-contracting of the work is not acceptable.
3. Amended Proposals - An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. District personnel will not collate or assemble proposal materials.
4. Offeror's Rights to Withdraw Proposal - 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 signed by the Offeror's duly authorized representative addressed to the District. The approval or denial of withdrawal requests received **after** the deadline for receipt of the proposals is at the discretion of the Chief Procurement Officer.
5. Disclosure of Proposal Contents - The content of proposals will be kept confidential until written notice of a contract award has been made by the District. At that time, all proposals will be open to the public, except for the material which has previously been noted and deemed as proprietary or confidential.
6. Termination - This RFP may be canceled at any time and any and all proposals may be rejected, in whole or in part, when the District determines such action to be in the best interest of the District and the State of New Mexico.
9. Sufficient Appropriation - 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 effected by sending written notice to the contractor. The Owner's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

If the determination is made that there is insufficient funding to continue or finalize a project, the contractor will be compensated to the level of effort performed, as authorized by the Owner, if applicable prior to that determination.
10. Standard Contract - The Owner will use the standard agreement between Owner and Design Professional as presented in Appendix A. Any Offeror questions about any provision(s) of the contract terms and

conditions must be promptly brought to the attention of the Chief Procurement Officer.

11. Offeror Qualifications - The Selection Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Selection Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.
12. Right to Waive Minor Irregularities - The Chief Procurement Officer, or her designee, reserves the right to waive minor irregularities. The Chief Procurement Officer 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 Chief Procurement Officer.
13. Notice - The New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.
14. Release of Information - Only the Owner is authorized to release information about projects covered by this RFP. The Offerors must refer to the Owner any requests to release any information that pertains to the work or activities covered by any action or award related to this RFP.
15. Project Reporting - In addition to planning and program meetings with the Owner, Owner Representative and User Agency Representative, as needed, the successful Offeror will be expected to visit the site at least once a week during the construction phase, or as modified by contract agreement.
16. Ownership of Documents - The Design Professional Contract (See Appendix A) will require that the drawings, specifications and other project documents are the property of the Owner. The Design Professional contract has certain requirements as to the rights and responsibilities of the Owner and Architect/Engineer.
17. Clarifications from Offerors - The Chief Procurement Officer or her designee, after review of the proposal and/or Interview, may request clarifications on information submitted by any, and all Offerors.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Only one proposal offer may be submitted by each individual entity for the one project, which is the subject of this RFP.

B. NUMBER OF COPIES

Offerors shall provide four (4) identical copies of their proposal to the location specified in Section II, paragraph B on or before the closing date and time for receipt of proposals. One copy of the proposal shall also be submitted in electronic format (PDF) in addition to the four hard copies.

C. PROPOSAL FORMAT

The proposal must be limited in format and length. Format will be 8-1/2" x 11" with foldout sheets, allowed up to 11" x 17" in size. All foldout sheets, up to a maximum of 11" x 17" sheets will be counted as two pages and shall be labeled as such. Length of the proposal shall be limited to a maximum of thirty (30) pages (printed sheet faces) of text and/or graphic material for project proposals. **If there is any question as to format requirements they shall be directed to the Chief Procurement Officer for clarification, prior to submittal of documents.**

Material excluded from the twenty (30) page maximum count shall include and **shall be limited to:**

- ☐ Front cover (blank on back side)

- ☐ Submittal letter (one page maximum)
- ☐ Completed Campaign Contribution Disclosure Form (RFP EXHIBIT C)
- ☐ Valid NM Resident Business Preference Certificate issued by the New Mexico Tax & Revenue Department -or-
- ☐ Valid NM Veteran Preference Certificate issued by New Mexico Tax & Revenue Department.
- ☐ Tables of Contents page (one page maximum)
- ☐ **Divider pages (See Sections below)**
- ☐ Certificate(s) of insurance
- ☐ Back cover (blank on one side)
- ☐ Project Listing Form (RFP Exhibit B)

ANY SHEETS OR PAGES INCLUDED IN THE PROPOSAL, BUT NOT SPECIFICALLY EXCLUDED, AS NOTED ABOVE - SHALL BE COUNTED TOWARDS THE 30 PAGE MAXIMUM. NOTE: Any proposal deemed non-conforming in regard to format may be considered non-responsive. Offerors shall contact the Chief Procurement Officer to clarify any questions concerning format prior to submission

Divider Pages are noted herein. The Selection Committee will score proposals based on these Sections. A more detailed description and points assigned to each Section is provided under V. EVALUATION PROCESS/CRITERIA.

Section 1 Specialized Design

Section 2 Capacity and Capability

Section 3 Past Record of Performance

Section 4 Proximity/Familiarity with Site(s)

Section 5 Design Work produced in-state

Section 6 Volume of Work previously done

Section 7 Evidence of Understanding of Scope of Work

1. Proposal Organization - All pages *should* be numbered except for those specifically excluded as noted above. All foldout pages shall be counted as two (2) pages and *should* be numbered as such. Proposals *should* be organized in the same order as the evaluation criteria. Tabs for each evaluation criteria, Sections 1 through 7, are helpful.
2. Submittals - Each proposal must be accompanied by the following:
 - A. Submittal letter. The submittal letter (*the following information will be required in order to contract for the project*) should:
 - a. identify the submitting business;
 - b. identify name and title of the person(s) authorized by the company to contractually obligate the business for the purposed of this RFP;
 - c. identify the names, titles, and telephone numbers of persons to be contacted for clarification questions regarding this RFP;
 - d. be signed by a person authorized to contractually obligate the Offeror;
 - e. acknowledge receipt of any and all amendments to this RFP;

- f. contain a statement indicating a commitment to comply with all requirements of the Americans with Disabilities Act of 1990 for work performed as a result of this RFP;
 - g. contain a statement indicating a commitment to comply with the ASHRAE STANDARD, ASHRAE/IES 90.1-2001, Energy Efficiency Design of New Buildings, and the New Mexico Model Energy Code. Also, that design will incorporate water conserving fixtures and features; and,
- B. Campaign Contribution Disclosure Form (RFP Exhibit C)
 - C. Reference Form (RFP Exhibit D)
 - D. Offeror Signature Form and Amendment/Addenda Acknowledgement Form (RFP Exhibit E)

IV. EVALUATION PROCESS/CRITERIA

A. EVALUATION PROCESS

1. A Selection Committee comprised of MAS personnel and stakeholders will evaluate each responsive proposal offer on the basis of demonstrated competence and qualifications for the type of service required, and shall be based on the weighted evaluation criteria as outlined below in Section V. of this RFP.

2. Upon receipt and opening of proposals, MAS will determine the responsiveness of each proposal prior to its evaluation by the Committee. Note, MAS has the right to waive technical irregularities in the form of the Proposal of the Offeror, which do not alter the price, quality or quantity of the services, construction or items of tangible personal property offered. (§ 13-1-132 NMSA 1978).

1. Notice of Non-Responsiveness - For any proposal submitted which is deemed non-responsive, the Offeror will be notified in writing of such determination and the method for protesting the determination. (See Section II, paragraph C.)

2. Short listing Meeting - The Selection Committee will review each Offeror's proposal. Points will be allocated as outlined in Section V. of this RFP, by each member of the committee. The committee member rankings will be totaled and then averaged to determine the overall ranking of the firms. If more than three proposals are submitted, the Selection Committee may elect to hold interviews with the three highest-ranked proposals.

The Selection Committee may award the contract based on the results of the short listing alone. If fewer than three proposals are received, the Selection Committee may recommend an award or reissue the RFP.

3. Notice of Finalists - Each responsive Offeror will be notified in writing whether their proposal has been shortlisted. A public log will be kept of the names and rankings of all Offerors shortlisted for interviews.

4. Notice of Award - The Chief Procurement Officer or her designee will notify all finalists in writing of the final results of the interview and the overall selection process. For a period of thirty (30) days after the written date of award, proposals will be available for public inspection by appointment only, at the Mission Achievement and Success Charter School main office.

B. CRITERIA

The evaluation criteria and the corresponding point values for each criteria are as follows (information in one category may overlap information in other categories. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each separate category):

1. Specialized Design**20 Points**

- a. Provide information about the firm's specific technical experience with similar projects that demonstrate competence to successfully complete the project. Indicate the relevance of previous projects to the anticipated scope of work.
- b. Demonstrate the successful aspects of past design projects and the corresponding applications to the proposed scope of work. Include the firm's and team members experience using the LEED Green Building Criteria for new construction, existing building (LEED NC and LEED EB) certification process.
- c. Detail your firm's and that of your proposed sub-consultant's ability, depth of knowledge, skills, experience and expertise as it relates to the services requested and required to be performed as described and outlined within this Request for Proposal.
- d. Discuss how your firm will coordinate or provide particular services which may not be available in house.
- e. Identify any specialized services you feel may be required to complete performance of the proposed project and describe how your firm proposes to meet those identified needs.
- f. Describe techniques planned to assure that schedule milestones will be met.
- g. Review recent projects to demonstrate ability to meet project budget and schedule.
- h. Provide a proposed project timeline, broken down by labor category and level of effort to perform the services described within this RFP. The proposed timeline must identify all services to be performed; inclusive of all services proposed to be performed by any and all sub-consultants.
- i. Outline and completely describe your firm's commitment and guarantee for the successful completion of the project.
- j. Describe the approach your firm will take to ensure that all specifications, drawings, bid, construction and design documents will be thorough, accurate and complete. How does your firm propose to address any deficiencies uncovered in the above documents? What commitment and guarantee will your firm extend to MAS and its contractors in this regard?
- k. Describe the firm's methods and techniques for tying project goals directly to specific design strategies and how their progress may be monitored.

2. Capacity and Capability**20 Points**

- a. Provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and project administration requirements.
- b. Indicate the relationship of the work in this RFP to the firm's other current projects.
- c. Indicate proposed work schedules and milestones, with completion methods and strategies.
- d. Indicate key project team members and their specific rolls, experience and background. Demonstrate or indicate project team organization and working relationships. Other items could include references from clients, financial institutions and insurance carriers.
- e. Describe your firm's organization, including joint venture or other form of contractual association. Provide the name of the firm's owner(s) and/or principal officer(s), and state the date of incorporation (or contractual association), current annual revenues, and number of employees. Provide the firm's organizational chart.
- f. Provide a current resume for 1) the Architect(s) who will or may be assigned Responsible Charge, including NM professional licensure and registration number, 2) the project manager(s) who will be assigned to this project, and 3) each additional employee who will provide services under the proposed agreement, including those required for LEED certification. Provide proof of registration for the registered professional architect(s).
- g. Provide a current resume for 1) all proposed sub-consultant surveyors, architects or engineers

who will be contracted to provide or perform professional services under this project, including professional licensure and registration number and licensure for all proposed professional surveyors, architects and engineers,

- h. Provide a current resume for all specialized services that may be contracted out, including but not limited to recommendations for LEED commissioning agent, furniture consultants, etc.
- i. Provide qualifications for each Consultant or Sub-contractor the Offeror proposes to use for all consultant and subcontracted work.
- j. Errors and Omissions Insurance - Documentation of current errors and omissions insurance is a mandatory requirement at the time of the contract execution in the amount of \$1,000,000. Evidence of insurance should be included in the proposal in the form of a current Certificate of Insurance.

3. Past Record of Performance 15 Points

- a. 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.
- b. Include information regarding owner budgets, construction estimates, bidding and completed project cost including change order information. 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. References from past clients can be included.
- c. Identify and provide your firm's three (3) most recent project examples indicating your past record of performance on contracts with Educational or other Government Agencies or local public bodies within the State of New Mexico with respect to such factors as providing accurate Estimates of Probable Construction Costs, value engineering, cost control and avoidance, quality of work, and ability to meet schedules.
- d. Describe your firm's quality assurance program regarding, but not limited to, design, code compliance, and coordination of work. Identify those regulatory agencies, governing bodies and utility providers requiring involvement in the permitting, review, approval, certification, etc. processes connected to the project described within this RFP. Provide a short narrative summation of the anticipated involvement for each organization identified.
- e. Present your firm's five (5) most recently completed project examples that demonstrate your capabilities in relation to the proposed scope of work. For each case, describe the project and the work performed, detail what responsibilities you and your firm had in the project and provide the client's and general contractor's name, address, contact person name and a telephone number. Identify and provide a point of contact and phone number for all sub-consultants used on each of the five projects. Note, references listed must be willing to provide information about your firm's control of cost, quality of work, and ability to meet schedules. Do not list MAS as a reference.
- f. For each of the five (5) projects identified above, provide a project summary breakdown for each showing (a) final cost estimates compared to actual final construction costs; (b) number of change orders processed for each project providing (i) reason for each change, (ii) construction costs associated with each change order, (iii) actual average construction cost per square foot to construct each project, and (iv) amount of time extensions granted to contractor (provide a very brief reason/description for basis of granting each time extension).
- g. Has your firm or is your firm currently in any legal dispute, mediation or arbitration hearings regarding dispute resolution with an owner or contractor? If yes, provide detailed information.
- h. For each of the five (5) projects identified above, describe your firm's post-occupancy follow-through with respect to both programmatic/functional accommodation and maintenance/energy performance.

4. Proximity to or Familiarity with Site Location 10 Points

- a. Demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for design, construction and administration of the project. 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.

5. New Mexico Produced Work 10 Points

- b. It is in the State's best interest to support in-state businesses. Indicate the volume of work to be produced in New Mexico by a New Mexico firm or firms. 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.

6. Volume of Work Previously Done 5 Points

- a. Current Projects Listing - Complete and submit the Project Listing Form (RFP Exhibit B), which is provided at the end of this RFP. This form will indicate the status of all current work awarded for projects which are less than 75% complete. List each project by name, fee, and the percent complete of basic design services for each project. Firms shall be scored on any project that has been previously awarded and is, on the date of the submittal, less than 75% complete (see definitions for clarification of "75% complete"). Information on the status of past project awards shall be included in the "Project Listing Form" as a requirement of this RFP. If there are any questions as to the appropriate content of the form, contact the Chief Procurement Officer for clarification. Content will be checked and verified when the proposals are submitted. Information determined to be inaccurate by the Mission Achievement and Success Charter Schools will be confirmed with the Offeror and corrected as necessary prior to scoring by the Selection Committee.

- b.
- | | | | |
|-----------|----------------|-----------------|-------------------|
| \$ 25,000 | to | \$ 35,000 | 1 point deducted |
| \$ 35,001 | to | \$ 50,000 | 2 points deducted |
| \$ 50,001 | to | \$100,000 | 3 points deducted |
| \$100,001 | to | \$150,000 | 4 points deducted |
| \$150,001 | and over | | 5 points deducted |

7. Evidence of Understanding of the Scope 20 Points

A. Describe in detail the anticipated scope of work for the project. Include information about the project site, project administration, scheduling, budget and programmatic user requirements. Please address in your proposal other services which may be required including but not limited to:

- Master Plan Design
- FF&E Specifications
- Exterior Signage
- Cost Estimating
- Low Voltage Systems, Security, Data, AV

B. The proposal should demonstrate competent knowledge of project constraints as well as any applicable discussion of possible options for design approaches or techniques. **Offerors are not encouraged to provide specific design solutions for the project.** This would not preclude discussion of project parameters that may affect design decisions, concept approaches or design philosophies.

C. Please include in your proposal a proposed schedule for completing each phase of your work. The Mission Achievement and Success Charter School desires that the buildings be ready for occupancy by August, 2021 and therefore the design schedule should allow ample time for the build-to-suit of the facility.

PROPOSED SCHEDULE OF SERVICES:

Contract Execution:	8/1/20 (Estimate)
Programming (Review/Modify/Update Existing):	____/____/____
Schematic/Design Development:	____/____/____
Construction Documents:	____/____/____
Bidding/Construction:	____/____/____

8. Campaign Contribution Disclosure

Each prospective Offeror must include as part of their submittal the Campaign Contribution Disclosure Form included as Attachment 1 of this RFQ with all portions completed, including any required attachments.

- 9. Veteran Business** – A veteran business, pursuant to Section 13-1-22 NMSA 1978, shall be awarded the equivalent of ten percent (10%) of the total possible points assigned to the evaluation criteria. The percent awarded shall be determined by the Veteran business preference certificate issued by the NM Taxation and Revenue Department to the qualified Offeror(s).

10. Resident Business

A resident business, pursuant to Section 13-1-22 NMSA 1978, shall be awarded the equivalent of five percent (5%) of the total possible points assigned to the RFP evaluation criteria. When a joint proposal is submitted by both resident and nonresident businesses, the resident preference shall be reduced in proportion to the percentage work being performed by the resident business.

EXHIBIT A

ARCHITECT FEE SCHEDULE

PSFA PreK-12 Design Professional Fee Schedule

(NOTE: Included and Posted as a separated PDF File)

EXHIBIT B

ARCHITECT PROJECT LISTING FORM

(Projects listed shall include all school work in New Mexico)

FIRM: _____ DATE: _____

	PROJECT	AWARD DATE	CONTRACT DATE	AMOUNT	% COMPLETE
1.					
2.					
3.					
4.					
5.					
6.					
7.					
TOTAL FEES					

Notes:

1. See definitions for calculation of “75% Complete”. If any award is not proceeding in contract negotiations, please indicate the status in the “Remarks” below.
2. Fees do not include reimbursable expenses, which include: travel, per diem, printing, telephone or reproduction costs.
3. Federal funds shall be included in project calculations pursuant to 13-1-120 B (6).
4. Use additional sheets if necessary.

REMARKS:

EXHIBIT C

Campaign Contribution Disclosure Form

Pursuant to NMSA, 1978, 13-1-19.1 (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 measure 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 the two hundred and 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 DISCIPLINE.

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 or 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 either 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

-OR-

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

EXHIBIT D
RFP 2020-002

- REFERENCES -

OFFERORS SHALL PROVIDE REFERENCE ONLY ON THIS FORM.

1. FIRM NAME: _____
CONTACT PERSON: _____
TITLE OF CONTACT: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

COMMENTS: (Do not write in this area - for MAS use only)

2. FIRM NAME: _____
CONTACT PERSON: _____
TITLE OF CONTACT: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

COMMENTS: (Do not write in this area - for MAS use only)

3. FIRM NAME: _____
CONTACT PERSON: _____
TITLE OF CONTACT: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

COMMENTS: (Do not write in this area - for MAS use only)

EXHIBIT E

RFP#2020-002

OFFEROR SIGNATURE FORM AND AMENDMENT/ADDENDA ACKNOWLEDGEMENT FORM

ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda:

Addenda No. _____ Dated _____ Addenda No. _____ Dated _____

Addenda No. _____ Dated _____ Addenda No. _____ Dated _____

Addenda No. _____ Dated _____ Addenda No. _____ Dated _____

Addenda No. _____ Dated _____ Addenda No. _____ Dated _____

RESIDENT BUSINESS, RESIDENT CONTRACTOR AND RESIDENT VETERAN PREFERENCE CERTIFICATION

To receive a resident business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor preference pursuant to 13-4-2 NMSA 1978, a business or contractor is required to submit with its bid or proposal a copy of a valid resident contractor certificate issued by the taxation and revenue department to receive preference consideration.

RESIDENT/VETERAN PREFERENCE NUMBER: _____

In acknowledgement of receipt of the Request for Proposals, the undersigned agrees that he/she has received a complete copy of this Request for Proposal. The undersigned further agrees that he/she has read this Request for Proposal and agrees to all specifications, general requirements, and terms and conditions of said Request. This form must be signed and returned with the response to Request for Proposal. Non-compliance may cause said proposal response to be declared non-responsive.

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing proposal, (such persons, firms and corporations hereinafter referred to as the Offeror), being duly sworn, on his oath, states that to the best of his belief and knowledge no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing proposal, has directly or indirectly entered into any agreement or arrangement with any other Offerors, or with any official of Mission Achievement and Success Charter Schools (MAS) or any employee thereof, or any person, firm or corporation under contract with MAS whereby the Offeror, in order to induce the acceptance of the foregoing proposal by MAS, has paid or is to pay to any other Offeror or to any of the aforementioned persons anything of value, whatever, and that the Offeror has directly or indirectly entered into any arrangement or agreement with any other Offeror or Offerors which tends to or does lessen or destroy free competition in the letting of the award sought for by the foregoing proposal.

The Offeror certifies that the contractor shall operate in accordance with all applicable state and federal regulations.

The Offeror agrees that all terms and conditions within the proposal shall be considered a part of the contract as if incorporated therein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives.

COMPANY NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE: _____ FAX: _____ EMAIL: _____

NEW MEXICO GROSS RECEIPTS TAX NO _____

FEDERAL EMPLOYER ID NUMBER (FEIN) _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE _____

PRINTED OR TYPED NAME _____

TITLE _____

DATE _____

EXHIBIT F

PRELIMINARY PROGRAM DOCUMENTS

(NOTE: Included and Posted as a two (2) separate PDF Files)

APPENDIX A:

DRAFT

OWNER AND DESIGN PROFESSIONAL AGREEMENT

PARTIES TO THE CONTRACT

THIS AGREEMENT made this _____ day of _____ in the year Two Thousand Twelve (_____, 2012),

BY AND BETWEEN the:

Mission Achievement and Success Charter School

hereinafter called the "Owner", and:

_____.

hereinafter called the "Design Professional".

WHEREAS, with its request for proposals numbered RFP#2020-002, Owner solicited proposals for certain Consulting services; and

WHEREAS, Owner selected Design Professional's proposal as being the most advantageous and awarded the work to Design Professional; and

WHEREAS, the Owner must hire a legal resident registered Design Professional of New Mexico whenever any Public Work involves Design Professional services pursuant to 61-15-9 NMSA; and

WHEREAS, the Design Professional hereby represents that it employs _____ Project Design Professional, and that such Design Professional is a legal registered Design Professional, of good standing in New Mexico; and

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

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- Attachment C: Design Professional's Personnel
- Attachment D: Quality Assurance Plan
- Attachment E: OWNER Project Program Format
- Attachment F: Project Scope Statement

ARTICLE 1 - PROJECT

The Architectural Engineering Design _____, located on the OWNER _____ Campus. hereinafter referred to as the "Project".

Professional design services associated with this Agreement and the Project include, but are not limited to:

Design Professional
Civil Engineering
Structural Engineering
Mechanical Engineering
Electrical Engineering
Independent Cost Consulting
Communications Design RCDD
Landscape Design Professional

The Maximum Allowable Construction Cost (MACC) is \$_____.

ARTICLE 2 – Definitions

AS BUILT DOCUMENTS: Contractor “red-line” and blue print mark-up changes to the construction documents made during the construction process.

RECORD DOCUMENTS: Record documents are defined as construction drawings revised to show all changes to the construction documents made during the construction process, usually based on marked up prints, drawings, and other data furnished by the General Contractor to the Design Professional showing the final Project as it was built; final stamped surveys; reports; stamped Contract Documents and Specifications; and calculations which are to be provided to the Owner. Design Professional will compile for and deliver to the Owner a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor or other third parties. These Record Documents will show significant changes made during construction. Because these Record Documents are based upon information provided by other parties that may be unverifiable and that the Design Professional does not warrant the accuracy of such.

BIDDING: The solicitation process to procure an offer or proposal to enter into contract for work, within the procurement rules of the Central Purchasing Office, and in accordance with this agreement.

CADD: Computer Aided Design and Drafting

CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the Mission Achievement and Success Charter School Purchasing Department.

CLOSE-OUT DOCUMENTS: Those documents required by the Contract Documents to be submitted prior to substantial completion, final completion, and final payment.

CODES: All applicable Federal, state and local standards, building codes, and health and safety regulations, and laws. The Building Code will be the current New Mexico Building Code and the Fire Code will be the current New Mexico Fire Code. If there is a conflict between the Building Code and the Fire Code, the Building Code will always prevail.

ESTIMATE OF PROBABLE CONSTRUCTION COST: A forecast of construction costs prepared on the basis of the Design Professional's detailed analysis of materials and labor for all items of construction work.

CONTRACT DOCUMENTS: Conditions of the Contract (General, Supplementary, and other Conditions: Drawings, Specifications, Bid Forms, Agreement Forms, Wage Rates, and Addenda, 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.

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

DESIGN PROFESSIONAL: 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 professional services to be performed under this agreement, and who will sign and affix a New Mexico Design Professional's Seal to all plans, designs, drawings, specifications, and reports required for the Project.

REVIEW MEETING: Meetings at the end of each phase of plan development in which the A/E Team meets with the Owner's team and obtains feedback and direction for changes or adjustments to the plans that are necessary to obtain Owner approval to proceed to the next phase of design.

GENERAL CONTRACTOR: General Contractor ("Contractor"), builder, CMAR (Construction Manager at Risk), or construction firm performing the construction work, or firm responsible for the construction of the Project.

LEED: Leadership in Energy and Environmental Design.

LEED AP: Person who is a Green Building Certification Institute Accredited Professional qualified to steward the LEED certification process.

MAXIMUM ALLOWABLE CONSTRUCTION COST (MACC): The Maximum Allowable Construction Cost (MACC) for this Project is the total sum available, not including New Mexico Gross Receipts Tax, for construction purposes, excluding furnishing and moveable equipment, professional fees, Owner's contingency funds, acquisition costs, administrative costs, and other costs which are the responsibility of the Owner, as described in this Agreement.

NICET LEVEL 4 CERTIFIED PROFESSIONAL: A person who is certified as a fire protection systems designer.

OWNER DESIGNATED REPRESENTATIVE: The individual named in this Agreement, otherwise known as the Project Manager.

PROJECT PROGRAM means the written and graphic description of the Project objectives, including intended use of facilities and site, design constraints and criteria, physical parameters, spatial requirements and relationships, and requirements for special equipment, systems, and materials, the results of which are to be documented in a written manual.

RCDD: A person who is certified as a Registered Communications Distribution Designer.

REIMBURSABLE EXPENSES: Expenses incurred in addition to the basic services compensation that include actual expenditures by the Design Professional or its employees in the interest of the Project pursuant to this Agreement and limited in accordance with Article 5, and as otherwise authorized in writing by the Owner.

SITE: The physical location on which the Project is built, including, but not limited to 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.

ARTICLE 3 – OWNER'S RESPONSIBILITIES

3.0 The Owner will designate in writing and identify an Owner's Representative to act on its behalf. The Owner's representative will have limited authority to give general direction to the Design Professional, to answer questions with respect to the Project, to approve pay applications subject to other required approvals, and to initiate the change order process. OWNER's Purchasing Director in consultation with the Chairperson of the MAS Facilities Committee will administer this Agreement and will have the authority, to the extent authorized by OWNER policies, 1) to modify or interpret this Agreement, 2) to authorize the Design Professional to perform Special Services as defined in Article 5 of this Agreement, or 3) to approve Change Orders. No action, representation, or conduct by any OWNER representative, including the

Owner's Representative will relieve the Design Professional of its responsibilities to carry out its duties and obligations under this Agreement.

3.1. Owner will furnish the services of a geotechnical engineer or other consultants if such services are reasonably required by the Project, requested by Design Professional, and approved by Owner. Such services may include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, and other necessary operations for determining subsoil, air, and water conditions

3.2. Owner will consult with Design Professional regarding requirements for the Project and will furnish Design Professional a copy of Owner's Project Guidelines which will include a written scope statement, MACC and schedule, and all Owner's Design Standards, which will be considered the basis for, and supplementary to, the services required by the Agreement.

3.3. Owner may incorporate into the Project, drawings and specifications provided by consultants retained directly by Owner. Design Professional will have the right to provide a written exception request to the inclusion of any such documents stating the basis and reason for such exception.

3.4. Owner will furnish applicable testing services, such as services for testing quality of concrete and reinforcing steel, if reasonably required for the Project, and requested by Design Professional and approved by Owner.

3.5. Before any work is to begin under the terms of this Agreement, Owner will issue Design Professional a written Authorization to Proceed. Any work performed by Design Professional prior to receipt of the written Authorization to Proceed will be performed at Design Professional's own risk.

3.6. Owner will furnish information, approvals, and services required as expeditiously as necessary for the orderly progress of the work. Design Professional will promptly notify Owner in writing in the event orderly progress of the work is disrupted by failure of Owner to provide such information, approvals, or services, and the Project schedule will be adjusted as mutually agreed.

3.7 At the completion of Design Professional's services, OWNER will assess and critique the Design Professional's performance.

3.8 Owner will arrange and pay for the required advertisements for bid and other legal notices.

3.9 The Owner Designated Representative for this project will be (Name of Project Manager), (Title), (Department).

ARTICLE 4 - DESIGN PROFESSIONAL'S RESPONSIBILITIES

4.0 BASIC SERVICES

A. General

1. Design Professional will exercise the degree of care, diligence, skill and judgment appropriate to the Standard of Care required by the laws of New Mexico for the practice of architecture in the rendering of all services under this Agreement.

2. The Design Professional affirms that its employees, consulting professionals, and sub-consultants will possess the experience, knowledge, and character necessary to qualify them individually for the services to be performed by them, under this Agreement.

3. Design Professional acknowledges the relationship of trust and confidence established between Design Professional and Owner by this Agreement. Accordingly, Design Professional's acts will be consistent with this relationship. Design Professional will further the interest of Owner through efficient business administration, Project management and design.

4. Design Professional's key personnel and sub consultants for this Project, as identified in Attachment C, "Design Professional's Personnel", will remain assigned for the duration of the Project unless otherwise agreed to in writing by Owner. Owner will not unreasonably withhold approval of staff changes. Owner may require substitution of any personnel or sub consultant provided that Owner has first notified Design Professional in writing and allowed a reasonable period for adjustments and/or corrections.

5. Design Professional and Owner will jointly establish a written schedule for performance of Design Professional's services for the Project. The schedule will be in form and level of detail as required by Owner. Upon establishment of schedule, Owner will issue a written notice to proceed with professional services.

6. Design Professional will periodically reevaluate the established schedule and notify Owner in writing of any actual or anticipated deviation of Design Professional's services from the schedule. Any adjustments to the established time schedule will be allowed only when approved in writing by Owner.

7. In carrying out its services, Design Professional will employ the Mission Achievement and Success Charter School Design Standards (to be supplied by the Owner), and will design the Project in accordance with all applicable federal, state, and local laws, statutes, ordinances, codes, orders, rules, and regulations in existence at the time these services are rendered.

8. The review and approval of documents by Owner does not imply such documents conform to the requirements of applicable laws, statutes, ordinances, codes, rules, or regulations.

9. Design Professional will review information provided by consultants retained directly by Owner, and will coordinate the work of such consultants with Design Professional's work into an overall set of consistent plans, specifications, and other Contract Documents. Design

Professional will have the right to provide a written exception request to the inclusion of any such documents stating the basis and reason for such exception.

10. Design Professional will designate and appoint sub consultants after conferring with Owner regarding the selection of Design Professional's sub consultants. Design Professional will not appoint any sub consultant to which Owner has a reasonable objection. Design Professional will incorporate the provisions of this Agreement and a scope of work consistent with the requirements of the Project into Design Professional's contracts with sub consultants.

11. Design Professional and sub consultants will meet with Owner's representatives to validate the Project Program and Guidelines; visit the site in order to become familiar with all governing site conditions; and ascertain general and specific requirements for the Project, including functional requirements, technical requirements, site requirements, sustainable design requirements and any other conditions peculiar to the project that may affect the design, location, or costs.

12. Design Professional will provide to Owner up to seven (7) sets of the review documents upon completion of each of the Schematic, Design Development, 50%, and 100% Construction Document phases of Design Professional's services, as a part of basic services. If requested by Owner, Design Professional will furnish additional copies, in different sizes, and be reimbursed for them, in accordance with Article 5 of this Agreement. Cost of printing these review sets will be Reimbursable Expense.

13. Design Professional will meet with Owner, as reasonably requested, to properly ensure that the developing design is meeting Owner's requirements; and will conduct presentations of the Project to such review groups as may reasonably be required, to secure necessary approvals from Owner or other authorities having jurisdiction. Design Professional will keep meeting minutes of all Project related meetings and distribute minutes within five working days after each meeting.

14. Throughout the design process, Design Professional will assist Owner with analyzing the Project scope, design alternatives, schedule, and budget options, to keep the Project within the MACC. If the Estimate of Probable Construction Cost exceeds the MACC, the Design Professional will propose design alternatives, scope, and/or schedule options that resolve the estimated cost over-runs, for the Owners consideration.

15. The Design Professional will participate with other separate contractors, the Owner's own forces and the Owner in reviewing and coordinating their work when directed to do so. The Design Professional will make any revisions to the schedule deemed necessary, after a joint review with the Owner and mutual agreement is established, as a process in the provision of Basic Services.

16. Design Professional will prepare all applicable drawings and other information in compliance with Owner requirements for each phase review, in a form and style suitable for presentation, review, and reproduction.

17. Design Professional will provide the services necessary to comply with the Document Review Process in accordance with (Attachment B).

18. Early planning organization of design work and all Estimates of Probable Construction Cost are to follow CSI formatting Standards.

19. The Design Professional will assist the Owner in coordinating the Project with governmental agency requirements and building permit applications.

20. All documents that are a part of this Project are to be achievable in an electronic format approved by the Owner.

B. The Design Professional's basic services will consist of, but is not limited to, the following, as identified in Paragraphs 4.1 through 4.12:

4.1 PROGRAMMING PHASE

4.1.1 A written Project Program Statement, in the format defined by Attachment E, or as negotiated with the Owners Representative, will be developed by the Design Professional from information provided by the Owner, including the OWNER Master Plan, academic strategic and business plans, administrative mission and goals, educational program requirements, and the knowledge and experience of the Design Professional. The purpose of the Program Statement is to define the Project's goals and constraints including budget, scope, schedule, sustainability objectives, aesthetic objectives, the technical basis of design, and quality. The Program will be developed in the form and format required by the Owner.

4.1.2 The Design Professional will transmit the Draft Project Program Statement to the Owner, along with a code analysis, and 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 will be included for consideration by the Owner.

4.1.3 The Design Professional will obtain the written approval of the Project Owner Representative; who is responsible to obtain user and administrative concurrence to proceed.

4.2 SCHEMATIC DESIGN PHASE.

4.2.1 Based upon Owner's approved program document, and upon receipt of Owner's written Authorization to Proceed, Design Professional will, in consultation with Owner and any other persons or entities designated by Owner, further establish the general and detailed requirements for the Project, and prepare Schematic Design Documents that represent Design Professional's recommendations. The Schematic Design Documents will comply with requirements set forth in Attachment B, Document Requirements.

4.2.2 At completion of the Schematic Design Phase, Design Professional will submit to Owner, 5 copies of the updated Estimate of Probable Construction Cost projected to the

expected midpoint of construction, itemized by major categories, to give reasonable assurance that construction costs will not exceed the Maximum Allowable Construction Cost ("MACC"). The format of the estimate will be based on the Construction Specifications Institute ("CSI") Master format or an itemized breakdown that includes all the components necessary to complete the Project, as approved by the Owner. The Estimate will establish a preliminary schedule setting forth the expected period of time required for completion of design documents through construction of the Project.

4.2.3 Prior to the printing of final Schematic Design Documents for Owner, Design Professional will submit a checklist, noting any exception or omissions to the requirements, in a format acceptable to Owner, for Owner's approval.

4.2.4 Design professional will attend OWNER Review Meeting and provide meeting notes in correlation with OWNER comments for each session attended. Formal OWNER Review will take place 14 to 21 days after AE submittal to Owner. Design Professional will provide written response, as soon as possible but no later than fourteen (14) calendar days after the Formal Design Review Meeting, to all Owner review comments, on Owner supplied Review Comment Resolution Form. Design Professional will provide written recommendations(s) if at variance with the review comment(s).

4.2.5 Prior to completion of Schematic Design, Design Professional will submit a detailed comparative space program spreadsheet acceptable to the Owner, indicating current versus programmed areas. All spaces, rooms, interior stairs, elevator and mechanical shafts, as they are shown on the Schematic Design Phase Project documents will be provided. If significant revisions are required to secure Owner's approval, Design Professional will incorporate such revisions into the Schematic Design Documents before proceeding with Design Development.

4.2.6 The Design Professional will prepare the Schematic Design documents in a form and style acceptable to the Owner for use in the Owner's Schematic Design Brochure / presentations.

4.2.7 Design Professional will secure Owner's written approval of the Schematic Documents for each phase.

4.2.8 Design Professional will continue to progress Project during OWNER review periods so as not to delay the Project and will incorporate all subsequent review items when supplied.

4.3 DESIGN DEVELOPMENT PHASE

4.3.1 Upon written authorization to proceed from Owner, Design Professional will prepare, based upon the approved Schematic Design Documents, Design Development Documents required to fix, describe, and illustrate the full size, character, and scope of the Project. The Design Development Documents will comply with the requirements of Attachment B, Document Requirements.

4.3.2 Prior to completion of the Design Development Phase, Design Professional will prepare an updated Estimate of Probable Construction Cost, including an updated Project schedule, in the same format as prepared for the Schematic Design Phase. The updated Estimate

will include a design contingency and be in sufficient detail to give reasonable assurance that construction costs will not exceed the MACC.

4.3.3 Prior to printing final Design Development Documents for Owner, Design Professional will submit a checklist, noting any exceptions or omissions to the requirements, for Owner's approval.

4.3.4 Design Professional will provide written response, as soon as possible but no later than fourteen (14) calendar days from the design review meeting, to all Owner review comments, on the Owner supplied Review Comment Resolution Form. Design Professional will provide written recommendations(s) if at variance with the review comment(s). Said responses will, as appropriate, be incorporated into a revised Construction Cost Estimate.

4.3.5 Prior to completion of the Design Development phase, Design Professional will submit a detailed comparative space program spreadsheet acceptable to the Owner, indicating current versus programmed areas. All spaces, rooms, interior stairs, elevator and mechanical shafts, as they are shown on the Design Development Phase Project documents, will be provided. If significant revisions are required to secure Owner's approval, Design Professional will incorporate such revisions into the Design Development Documents before proceeding with Construction Documents.

4.3.6 Design Professional will submit to Owner one printed and one electronic copy of the structural, mechanical, electrical engineering, and LEED calculations (including points, point back-up, and energy), at completion of Design Development phase.

4.3.7 Design Professional will select all finish materials and colors and prepare material and color boards for the Owner's review and approval.

4.3.8 Design Professional will secure Owner's written approval of the Design Development Documents before beginning work on next phase.

4.4 CONSTRUCTION DOCUMENTS PHASE

4.4.1 Upon written authorization to proceed from Owner, Design Professional will prepare, based upon the approved Design Development Documents, Construction Documents consisting of Drawings, Specifications, and other documents, setting forth in detail the scope of the Project. Such documents will describe materials, standards of workmanship, finishes, equipment, and the conditions affecting the work required to be performed in all divisions of the construction work, and comply with Attachment B, Document Requirements.

4.4.2 The Design Professional affirms that there will be adequate participation, coordination, and cooperation, by all consulting professionals, in the development of the Construction Documents, so that the components of the Project are coordinated; 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 in the general area of the Project.

4.4.3 The Design Professional will, 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.

4.4.4 Design Professional's Checklist will be submitted with the Construction Document review sets noting any exceptions or omissions taken to previous Owner review comments. The checklist is to be provided in Design Professional's format.

4.4.5 Design Professional, in preparation of this phase of the work, will follow the scope and form of the Project, as set forth in the approved Design Development Documents, except that Design Professional will incorporate changes requested in writing by Owner.

4.4.6 Design Professional will conduct a detailed intra- and interdisciplinary document check in accordance with the Quality Assurance requirements set forth in Article 8 of this Agreement. This document check and the resulting corrections must be completed prior to printing of the Construction Documents for Owner's review. Design Professional will submit to Owner documentation confirming that the document check has been completed.

a) Design Professional will prepare a final Detailed Statement of Probable Construction Costs, including an updated schedule, based on the completed Construction Documents, in the same format and level of detail as the Detailed Statement prepared for the Design Development Phase. The final Detailed Statement of Probable Construction Costs will include an itemization of alternates proposed and the estimated construction cost to be added or deducted for each alternate selected.

b) Design Professional will prepare and submit to Owner for review a list of required Contractor submittals, including material and shop drawings, and equipment submittals, that Design Professional recommends be included in the Construction Contract.

c) Design Professional will propose and prepare bid alternates to provide reasonable assurance that Owner will be able to award a construction contract that does not exceed the MACC. Only work and items approved by Owner will be included in the bid alternate category. The number of alternates will be kept to a minimum.

d) Design Professional will submit to Owner completed working drawings, copies of the specifications, and two (2) copies of the structural, mechanical, and electrical calculations. Review or approval of the Drawings, Specifications, and calculations, and other Construction Documents by Owner, will not relieve Design Professional of any responsibility for their completeness and accuracy.

4.4.7 Prior to completion of the Construction Documents, Design Professional will submit a detailed comparative space program spreadsheet acceptable to the Owner, indicating current versus programmed areas. All spaces, rooms, interior stairs, elevator and mechanical shafts, as they are shown on the Construction Documents, will be provided. If significant revisions are required to secure Owner's approval, Design Professional will incorporate such revisions into the Construction Documents before proceeding with the Bidding Phase.

4.4.8 Design Professional will secure Owner's written approval of the Drawings and Specifications, the final Detailed Statement of Probable Construction Cost, and the alternates prior to proceeding to the next phase.

4.4.9. Design Professional will provide assistance to the Contractor as needed to make application for obtaining a building permit and will make application for any other permits or approvals normally required for projects similar to this Project. Upon application for such permits, Design Professional will reply to all inquiries from governing agencies, will make any necessary or appropriate changes to the Contract Documents approved by Owner, and work to expedite the issuance of all such permits or approvals. Design Professional will keep Owner advised of all developments related to issuance of the permits, promptly provide Owner with copies of permit or approval related documents.

4.5 BIDDING PHASE.

4.5.1 When authorized by Owner to call for bids, Design Professional will provide Construction Bid Documents, and work with the Owner's Purchasing Office, to develop complete sets of bid documents for distribution and bidding purposes.

4.5.2 Design Professional will, in consultation with Owner, prepare the necessary bidding information, bidding forms, and the form of Agreement between Owner and Contractor (the "Construction Contract"), which will include Owner's General Conditions of the Contract, with Amendments, Special Conditions, and standard forms, as furnished by Owner; and ensure that the subsequent divisions of the Construction Documents are consistent therewith.

a) Construction drawings will be prepared utilizing a computer aided design and drafting ("CADD") system in accordance with Owner's CADD standards and OWNER Design Standards.

4.5.3 Design Professional will attend the pre-bid conference, prepare addenda for distribution, and generally assist the Owner in managing the bid process, as requested and required by the Owner.

4.5.4 Design Professional will participate with Owner in evaluation of the bids.

4.5.5 In the event the lowest responsive bid submitted by a responsible bidder satisfactory to Owner for the construction of the Project, pursuant to the approved Drawings and Specifications for the Project, exceeds the MACC, then Design Professional will, at its sole cost and expense, revise Drawings and Specifications, as may be required by Owner to reduce or modify the quality, or quantity, or both, of the work, so that the total construction cost of the Project will not exceed the MACC.

4.5.6 Design Professional will follow and administer the Owner's directive with regards to posting plans and collecting plan check fees.

4.6 CONSTRUCTION PHASE

4.6.1 Design Professional's responsibility to provide services for the Construction Phase will commence upon award of the Construction Contract.

4.6.2 At Owner's option, Design Professional will conduct a preconstruction presentation to Owner's representatives.

4.6.3 Design Professional will participate with Owner in the preconstruction conference and pre-installation meetings with Contractor.

4.6.4 During the progress of Construction, the Design Professional will perform services including:

a) issue instructions to Contractor with such reasonable promptness so as not to cause a delay in the work, after appropriate consultation with Owner's representative.

b) render interpretations of the requirements of the Contract Documents necessary for the proper execution or progress of the work, with such reasonable promptness so as not to cause a delay in the work.

c) provide to Owner copies of all written communications of any kind or nature whatsoever that Design Professional provides to Contractor. Such copies will be provided to Owner at the same time such communication is provided to Contractor.

d) review, approve or otherwise take appropriate action upon Contractor's submittals, including field questions, shop drawings, and submittals of materials, equipment, tests, and inspections. Design Professional's action will be taken with such reasonable promptness so as to cause no delay in the work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by Contractor. Design Professional's review will not constitute approval of safety precautions or, unless otherwise specifically stated by Design Professional, of construction means, methods, techniques, sequences, or procedures. Design Professional's approval of a specific item will not indicate approval of an assembly of which the item is a component.

e) prepare necessary documents for changes in the work including revision drawings, cost estimates, and reasons for change, and secure, analyze, and recommend disposition of proposals from Contractor for changes in the work. Review of Contractor's proposals will be written and include a detailed analysis of Contractor's cost breakdown and a recommendation thereon. Design Professional will attend Owner's meetings convened for purpose of reviewing proposed changes in the work.

f) determine and certify the amount owing to Contractor, based on Design Professional's observations and evaluation of Contractor's Application for Payment. Design Professional's certification for payment will constitute a representation by Design Professional to Owner, based on Design Professional's observations at the site, a review of Contractor's progress schedule(s) and on the data comprising Contractor's Application for Payment, that the work has progressed

to the point indicated and that, to the best of Design Professional's knowledge, information and belief, the quality of the work is in accord with the Contract Documents and any specific qualifications stated in the Application and Certification for Payment; and that Contractor is entitled to payment in the amount requested. Design Professional's certification for payment will be in a form as required and approved by the Owner. By certifying an Application for Payment, Design Professional will not be deemed to represent that any examination has been made to ascertain how and for what purpose Contractor has used the moneys paid on account of the contract sum.

g) obtain and review Contractor's progress schedules for conformance with the Construction Documents, and promptly notify Owner and Contractor of deviations and noncompliance.

h) visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work completed and to determine if the Work is being performed in a manner indicating that the work when completed will be in accordance with the Contract Documents.

i) attend on-site Project progress meetings, and require Design Professional's major sub consultants to do likewise unless exempted by Owner. Progress meeting schedule is to be determined in consultation with Owner. Design Professional will require its other sub consultants to conduct site observations, as required, to adequately observe the work they designed, and attend progress meetings as mutually agreed by Owner and Design Professional. Design Professional will keep Project meeting minutes and will submit to Owner site observation reports for each site visit. Project meeting minutes and observation reports will be transmitted to Owner and Contractor as soon as possible but in no event later than one day prior to the next weekly meeting.

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

4.6.6 Design Professional will at all times endeavor to discover and guard Owner against defects and deficiencies in the work of Contractor and Design Professional will promptly advise Owner of work which does not conform to the Contract Documents. Whenever Design Professional considers it necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, Design Professional will advise Owner of the need for special inspection or testing of any work. Design Professional may recommend, subject to the written approval of Owner, such special testing or inspection in accordance with the provisions of the Contract Documents whether or not such work is then fabricated, installed or completed. If requested by Owner, Design Professional will review billings submitted to Owner by the special inspection and testing services.

4.6.7 Design Professional will have responsibility to reject Work which does not conform to the Contract Documents. Design Professional will advise Owner's Representative that work

should be stopped when such stoppage may, in Design Professional's reasonable opinion, be necessary to ensure the proper execution of the work.

4.6.8 Issue a Certificate of Substantial Completion when all work called for by the drawings and specifications has been substantially completed, a certificate of occupancy has been issued, a draft Operating and Maintenance Manual has been submitted to the Owner, and the Project can be occupied by the Owner.

4.7 CONSTRUCTION COMPLETION PHASE

4.7.1 Design Professional will conduct pre-final inspection and prepare check lists of corrective items, make final inspections (all disciplines), including at least one re-inspection, determine the date of Final Completion of the Project and Contractor's compliance with the Contract Documents, and recommend acceptance of the Project to Owner.

4.7.2 Design Professional will obtain, review, approve, and deliver to Owner written guarantees, manuals, and instructions from Contractor as required by the Construction Documents, prior to Final Acceptance.

4.7.3 Design Professional will update the original Construction Drawings to reflect changes to the Project record drawings provided by Contractor, incorporating all changes in the work (including utilities) made during construction. Design Professional will annotate and cross-reference changes, and prominently note "Record Drawing (and the revision date)" on each drawing sheet. A reproducible copy of the corrected original Construction Drawings and related electronic media will be completed and submitted to Owner within two months of Project Substantial Completion and receipt of Contractor's Record Drawings.

4.7.4 Assist Owner in eight months LEED Operation Evaluation.

4.7.5 Upon request during the warranty period, Design Professional will assist Owner in identifying defects in the Project, determine corrective measures, and assist Owner in implementing corrective measures.

4.7.6 Design Professional will, at the 11 month end of Warrantee period, conduct a building and site inspection to verify conditions of the work, and to identify any defects not previously noted.

4.8 CERTIFICATE OF PAYMENTS

4.8.1 The Design Professional Project Representative will, within **five (5) days** after receipt of the Contractor's Application for Payment, will 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.

4.8.2 The Certificate for Payment will 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.

4.8.3 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:

A. 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,

B. 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,

C. Payment certified is in accordance with the General Conditions of the Contract for Construction.

4.8.4 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 will ensure that all requirements of Close-Out, as defined in the General Conditions of the Contract for Construction, have been delivered including Record Drawings. The Design Professional will responsible for recommendation for acceptance and final approval of the Record Drawings.

4.8.5 The Design Professional will provide assistance for the production of Record Drawings in accordance with Subparagraph 4.12.

4.9 SUBMITTALS

4.9.1 The Design Professional will 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 will designate in writing that the Design Professional:

- a). takes no exception; or,
- b). rejects and requires the Contractor to re-submit as specified; or,
- c). requires corrections or revisions as noted and then re-submit; or,
- d). approves as corrected; or,
- e). is returning with no action to be included within submittal package required by the Construction Documents.

4.10 MILESTONES

4.10.1 Approvals. The Design Professional will 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.

4.10.2 Substantial Completion Inspection and Recommendation. Upon request by the Contractor and within **ten (10) days** of receipt of Contractor's Punch List and request for Substantial Completion, the Design Professional Project Representative will conduct Project inspections to determine the Dates of Substantial Completion. If work is found to be complete, and upon approval by the Owner, the Design Professional Project Representative will issue Certificate of Substantial Completion, and upon acceptance by all parties, issue a Certificate for Payment appropriate to the work complete.

4.10.3 Close-Out. The Contractor will complete all of the requirements of close-out in accordance with Subparagraph 9.10.1 of 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 will schedule such meeting within **ten (10) 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, will provide written approval of Contractor's completion of close-out requirements within **five (5) days** of the conclusion of the meeting.

4.10.4 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 stating that to the best of the Design Professional's knowledge, information, and belief, and on the basis of the Design Professional's on-site visits and inspections, the work has

been completed in accordance with terms and conditions of the Construction Contract Documents.

4.11 AUTHORIZED WORK

4.11.1 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:*

- a). an emergency endangering life and property; or
 - b). approved by Modification / Change Request or Change Order; then
- payment for such work will be borne by the Design Professional and will constitute adequate grounds for dismissal or other action against the Design Professional.

4.12 RECORD DRAWINGS

4.12.1 The Design Professional will be responsible for production of the Record Drawings from the Contractor's As-Built Drawings. The Design Professional will provide to the Owner

- a). one set of 3 mil double-sided mylar Record Drawings;
- b). **three** complete sets of Record Project Manuals; and,
- c). CD's or other media to transmit Record documents.

4.12.2 **Records.** Final surveys, reports, Contract Drawings and Specifications, and calculations will be signed and stamped by an Design Professional or engineer licensed in the State of New Mexico and provided to Owner.

4.13 MEANS AND METHODS

4.13.1 The Design Professional will not have control or charge of, and will 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.

4.13.2 **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 will document event in writing to the Owner and the Contractor. The Design Professional does not have stop-work authority; however, the Design Professional will 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 will not be deemed to create a duty on the part of the Design Professional or the Owner to monitor or to be responsible in any way for jobsite safety.

4.14 PROJECT REPRESENTATION

4.14.1 If the Owner and the Design Professional agree that more extensive representation for inspection of the Project than that described in Sections 4.1 through 4.13, the Design Professional will, 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.

4.14.2 The Owner reserves the right to employ an independent entity for peer review. The Design Professional will cooperate with the Peer Review Design Professional in the performance of the Peer Review Design Professional's duties.

4.15 ADDITIONAL SPECIAL SERVICES

4.15.1 Additional Special 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. Additional Services may include but, are not limited to:

- a) financial feasibility of the -Project, any of the Project's components or other special studies;
- b) drawings, specifications, or any other supporting information, direction or services necessary in connection with a Master Change Request or Change Orders, provided that the additional services to be performed are not required pursuant to Sections 4.0 through 4.14 as Basic Services and provided that such modification or change to the work is not due to errors or omissions of the Design Professional;
- c) as interpreted and determined by the Owner, extensive and continuous on- site inspections to check the quality or quantity of the Contractor's work;
- d) 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.
- e) Interior design related services.

4.15.2 As an Additional Special Service, Design Professional may be required to furnish the services of a geotechnical engineer or other consultants if such services are reasonably required by the Project and approved by the Owner. Such services may include test borings, test pits, soil bearing values, percolation tests, air and water pollution test, and other necessary operations for determining subsoil, air and water pollution tests, and other necessary operations for determining subsoil, air, and water conditions.

4.15.3 As an Additional Special Service, if necessary for the Project, the Design Professional will provide a land survey of the site, prepared by a registered land surveyor, giving 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 data pertaining to existing buildings, other improvements and trees; and information concerning location of service and utility lines, both public and private, above

and below grade, including inverts and depths as indicated by available records. The survey will be referenced to a Project benchmark.

4.16 TIME:

4.16.1 The Design Professional will perform Basic and Additional Special Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

4.16.2 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 established by the Owner. The schedule will not be modified except for reasonable cause outside of the Design Professional's control and unless agreed upon by the Owner. The Design Professional will 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, will constitute a basis for termination or withholding of payment until schedule compliance is achieved by the Design Professional

4.16.3 **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. The Design Professional will prepare and submit for Owner approval a schedule for the performance of the Design Professional's services. This schedule will include reasonable allowances for review and approval times required by the Owner, performance of services by Owner's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This schedule will be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the project requested by the Owner, or for delays or other causes beyond the Design Professional's reasonable control.

ARTICLE 5 – PAYMENT TO DESIGN PROFESSIONAL

5.0 COMPENSATION OF DESIGN PROFESSIONAL

5.0.1 The Owner agrees to pay the Design Professional for the work and services contemplated under the terms of this agreement, as basic services set forth in Article 4 herein, for the firm fixed fee amount of _____ dollars (\$_____) plus applicable gross receipts tax.

5.0.2 Progress payments for basic services in each phase will total the following percentages of the total basic compensation payable as follows:

- a. Programming (%) \$ _____
- b. Schematic Design Phase (%) \$ _____
- c. Design Development Phase (%) \$ _____
- d. Construction Documents (%) \$ _____

- e. Bidding/Negotiation (%) \$ _____
- f. Construction Administration (%) \$ _____
- g. Project Close-out Documents (%) \$ _____
- h. Warranty Closeout (%) \$ _____

5.0.3 New Mexico Gross Receipts Tax will be billed as a separate added amount at the time of each pay request at the percentage applicable at the time of billing.

5.0.4 As provided herein, Owner will reimburse the Design Professional for certain costs incurred by Design Professional in connection with this Agreement (the “Reimbursable Expenses”). Reimbursable Expenses of the Design Professional will include the following items when approved in writing by the Owner: Transportation and subsistence of principals and employees on special trips related to the Project, beyond 60 miles of metropolitan Albuquerque, at the prevailing rate of travel reimbursement being paid by the Owner; long distance communications as required to expedite the work of the Contract; and cost of reproduction of drawings and specifications required for bidding. Payment of Reimbursable Expenses to the Design Professional will be paid by the Owner at the direct cost to the Design Professional. All requests for reimbursable expenses will be accompanied by copies of original invoices. Sets beyond the seven (7) sets of review documents, as described in Paragraph 4.0.A.12 above, will be reimbursable

5.0.5 Owner has the right to require, and Design Professional agrees to perform, Additional Special Service related to the Project other than those services identified as basic services. For Additional Special Services, Design Professional will be required to submit a detailed written proposal for performing the Additional Special Services and a “not to exceed” fee proposal for such services to Owner for its review and written approval. The “not to exceed” fee proposal will be broken down into specific hours and will identify all subcontractor costs to perform the services and accomplish the work. OWNER’s approval of such proposal will be in writing and communicated through the issuance of an approved purchase order revision issued through OWNER’s Purchasing Department. No payment for Additional Special Services and no reimbursement for Reimbursable Expenses in connection with such Additional Special Services will be made except for such services performed in accordance with OWNER’s advance written approval.

5.0.6 For Owner authorized Additional Special Services of Design Professional, such services will be billed in accordance with Attachment A, Rate Guidelines. The billing rate and names of such Design Professionals must be agreed to by the Owner Representative in writing prior to any Additional Special Services being performed.

5.0.7 Design Professional may add any applicable gross receipts tax to the fees and other payments payable hereunder. The design Professional **will use and require the use of nontaxable transaction certificates by all other parties with whom it does business in connection with performing its services under this Agreement whenever allowed by law.** In all events, Design Professional will not include gross receipts taxes paid to others as a part of the

base dollar amount upon which Design Professional calculates gross receipts taxes when billing its fees and expenses to Owner.

5.0.8 No Federal, State, or local income, payroll or employment taxes of any kind will be withheld or paid by the Owner with respect to payments to the Design Professional or on behalf of the Design Professional, its agents or employees. Design Professional will withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Design Professional is not a corporation, Design Professional further understands that Design Professional may be liable for self-employment (Social Security) tax, to be paid by Design Professional according to law.

5.0.9 **Design Professional will present a monthly detailed invoice and statement of the services rendered.** Design Professional's invoices will reference the Owner purchase order number and be submitted in a format that has been reviewed and approved in writing by Owner. Payments will be made subject to Owner's approval of the statement of the services.

5.0.10 The Design Professional is obligated under the basic services section to prepare details of and to administer change orders. If the proposed change is initiated by the Owner, or results from field conditions, the Design Professional will be compensated for its effort in preparing, designing, and administering change orders at the rate of 6-1/2% of the actual construction cost of the change order. If the proposed change results from the Design Professional's oversight, the Design Professional's services working on the change order will constitute part of the basic services at the Design Professional's own expense.

ARTICLE 6 – DESIGN PROFESSIONAL'S RECORDS, AUDIT AND INSPECTION

6.0 Design Professional will maintain detailed time records that show the date, time, and nature of services rendered. These records will be subject to inspection by the Owner, its representatives, and the State Auditor. Owner, its representatives, and the State Auditor will have the right to audit billings both before and after payment. Payment under this Agreement will not foreclose the right of Owner to recover excessive and/or illegal payments. Owner, its representatives, and the State Auditor will have access to and the right to examine and/or audit any directly pertinent records, books, documents, and papers of Design Professional involving transactions related to this Agreement for a period of seven (7) years after final payment to Design Professional. This will be requirement will apply to all sub consultants and suppliers of Design Professional as it pertains to this contract.

6.1 The Owner may inspect, at any reasonable time, any part of the Design Professional's plant or place of business, which is related to performance of this Agreement.

ARTICLE 7 – OWNERSHIP AND USE OF DOCUMENTS

7.0 All drawings and specifications that are a product of this Agreement will become the property of the Mission Achievement and Success Charter School. Before receiving final payment, the Design Professional will deliver to the Owner the original working drawings and details and a bound volume of the specifications. The Owner does not have the right to use the working drawings and specifications for other building Projects, except as may be required for reference, without agreement from, and due compensation, as mutually agreed upon, to the Design Professional. The Owner will not have the right to sell the drawings and specifications. The Design Professional will be permitted to reuse parts of the drawings for other projects, but will not use them as a whole without the Owner's written permission.

ARTICLE 8 – ADDITIONAL TERMS AND CONDITIONS

8.1 PROFESSIONAL LIABILITY INSURANCE

The Design Professional will procure and maintain, during the life of this contract, Professional Liability Insurance in an amount not less than \$1,000,000 each occurrence. The insurance coverage will not be canceled or materially changed except after thirty-days (30) written notice has been provided to the Owner. The Design Professional will furnish the Owner copies of Certificates of Insurance showing the coverage, limits of liability, covered operations, effective dates and dates of expiration of policies of insurance carried by the Design Professional. Said coverage will be maintained for a period of five (5) years after the date of final payment hereunder.

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 Mission Achievement and Success Charter School will 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.

8.2 GENERAL LIABILITY INSURANCE

The Design Professional will furnish Owner one copy each of Certificates of insurance herein required for each copy of the Agreement showing coverage, limits of liability, covered operations, effective dates of expiration of policies of insurance carried by the Design Professional. The Design Professional will furnish Owner copies of limits. The Certificate of Insurance will be in the form of AIA Document G-705 or similar format acceptable to Owner. Such certificates will be filed with Owner and will also contain the following statements:

1. "The Mission Achievement and Success Charter School, its agents, servants and employee are held as *additional named 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."

WORKER'S COMPENSATION INSURANCE:

The Design Professional will procure and will maintain during the life of this contract Worker's Compensation as required by applicable State law for all Design Professional's employees to be engaged at the site of the project under this project and in case of any such work sublet the Design Professional will require the subcontractor or sub subcontractor similarly to provide Worker's Compensation Insurance for all the subcontractor's or sub subcontractor's Workers which are covered under the Design Professional's Worker's Compensation Insurance. In case any class of employee engaged in work on the project under this contract is not protected under a Worker's Compensation Status, the Design Professional will provide and will cause each sub-consultant or sub-subconsultant to provide Employer's insurance in any amount of not less than \$500,000.

Note, no workers compensation insurance has been or will be obtained by Owner on account of the Design Professional, its employees or agents. Design Professional will comply with the workers compensation laws with respect to Design Professional, its sellers and agents.

PUBLIC LIABILITY INSURANCE

The Design Professional will maintain liability insurance coverage in an amount not less than \$1,000,000 each occurrence. The insurance must remain in force for the life of the contract including all contract extensions or renewals.

VEHICLE LIABILITY INSURANCE:

The Design Professional will procure and will maintain during the life of this contract Vehicle Liability Insurance coverage in an amount not less than \$1,000,000 each occurrence. The insurance must remain in force for the life of the contract including all contract extensions or renewals.

SUB-CONSULTANT'S AND SUB-SUBCONSULTANT'S PUBLIC LIABILITY AND VEHICLE LIABILITY INSURANCE:

The Design Professional will either:

1. Require each sub-consultant or sub-subconsultant to procure and maintain during the life of the subcontract or sub-subcontract public Liability Insurance of the types and amounts specified above or,
2. Insure the activities of the sub-consultant or sub-subconsultant's in the Design Professional's Policy as required under this Article.

GENERAL:

All Insurance policies are to be issued by companies authorized to do business under the laws of the state in which work is to be done and acceptable to Owner.

The Design Professional will not violate, permit to be violated, any conditions of any said policies, and will at all times satisfy the requirements for the insurance companies writing said policies.

8.3. ASSIGNMENTS AND SUCCESSORS

The Design Professional agrees not to sublet, sell, nor assign this agreement, nor any portion of the work included herein, and not to enter into a partnership with any person or persons without the written permission of the Owner.

8.4. DISABILITY OR DEATH OF DESIGN PROFESSIONAL

If the Design Professional is a sole practitioner and becomes incapacitated, a representative will promptly deliver to the Owner all drawings and papers relating to the work and services hereunder. The Owner will pay to the Design Professional or the estate such equitable proportion of the remuneration provided herein as the work actually done by the Design Professional at the time of such stoppage bears to the whole of the work required to be done by the Design Professional under the terms of this agreement.

8.5 ACCEPTANCE AND REJECTION

8.5.1 If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the Owner is entitled to revoke acceptance of them the Owner may reject or revoke acceptance, require the Design Professional to correct without charge within a reasonable time, or required delivery at an equitable reduction in price, at the Owner's option. Design Professional will reimburse the Owner for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Design Professional will be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services will not waive the right to claim damages for breach of contract.

8.6. TERMINATION OF AGREEMENT

8.6.1 Owner hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Design Professional will be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Design Professional will be paid for Services and reimbursable expenses rendered up to date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by Owner as a result of the default, if any, by Design Professional. Upon Owner's request and authorization, Design Professional will perform any and all Additional Services necessary to complete the work performed to the date of suspension, abandonment or termination. Design Professional hereby expressly waives any and all claims for damages or compensation arising under this Section, except as set forth herein, in the event of such suspension, abandonment or termination.

8.6.2 Design Professional's termination for Cause. This Agreement may be terminated by the Design Professional with at least fifteen (15) days prior written notice to the Owner only when the Owner has substantially failed to perform its obligations under this Agreement. The written notice will include a description of the Owner's failure to perform, status of the work completed as of the date of termination together with a description and a work estimate of the effort necessary to complete work in progress. In such event, the Design Professional will be compensated for services completed and accepted to the date of termination, together with compensation for such Additional Special Services performed after termination which are authorized by the Owner to wind up the work performed to the date of termination. Upon the Owner's request and written authorization, Design professional will perform any and all Additional Special Services necessary to wind up the work performed to the date of termination.

8.7 QUALITY ASSURANCE:

A. General Requirements. Design Professional will provide in writing to Owner for review and approval, a program controlling quality assurance activities. Quality Assurance ("QA") will encompass all planned and systematic activities necessary to ensure that the Project will perform as intended in service, meet the program requirements, and comply with terms of this Agreement. As a minimum, the QA program will meet the following requirements:

1. Design Professional's QA program will cover activities affecting quality performed by Design Professional for Owner. Design Professional will include in all sub consultants' contracts the QA requirements defined herein. The QA program will be implemented upon the issuance of Authorization to Proceed and continue for the duration of activities covered by this program.
2. Design Professional will submit three copies of Design Professional's QA program for Owner's review and approval before or concurrent with the first monthly request for payment.
3. Design Professional will provide Owner access to activities and records affecting quality for the purpose of audits to confirm implementation of the QA program for work covered by this program. Design Professional will retain and maintain QA records identifiable, legible, and retrievable for the duration of the Project. QA records will be turned over to Owner, if requested, upon completion of the Work.
4. All elements of the plans and specifications will be checked by Design Professional and such checks should be made by persons other than those preparing the materials and by professional personnel trained in that specific discipline with the intent to:
 - a) Determine the completeness of the product delivered by the Design Professional.
 - b) Avoid change orders to construction contracts which are caused by conflicts, ambiguities, inaccuracies, and deficiencies in and between the construction plans and specifications.

B. Specific Requirements. Design Professional's QA program will include at least the following activities:

1. The specific methodology that will be used to cross-check all plans of the various disciplines to one another and for completeness and accuracy at each submittal stage.
2. The specific methodology that will be used to cross-check all the plans and specifications to each other for completeness and accuracy at each submittal stage.
3. A checklist of items that will be researched during the on-site investigation.
4. Maintenance of an "Exception to Project Requirements List." This list will include all items that are at variance with the Project Program including Owner Standards and/or other written Project requirements.
5. A system for tracking and documenting all changes to the Project Program.

8.8 THE DESIGN PROFESSIONAL REPRESENTATION AND ASSURANCES:

The Design Professional hereby represents and assures, to the Owner, the following:

- (a) The Design Professional is financially solvent, able to pay his debts as they mature, and possessed sufficient working capital to complete the services required and perform his obligations hereunder;
- (b) The Design Professional is able to furnish any plant, tools, materials, supplies, equipment and labor required to complete the services required hereunder, and perform all his obligations hereunder, and have sufficient experience and competence to do so;
- (c) The Design Professional is authorized to do business in New Mexico and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over him and the services required hereunder in the Project itself;
- (d) The Design Professional's execution of this agreement, and his performance thereof, is within his duly authorized powers; and
- (e) The Design Professional's duly authorized representative has visited the Project, familiarized himself with the local conditions under which the services required hereunder are to be performed, and correlated his observations with all of the requirements of the Contract Documents.

8.9 INSTRUMENTALITIES.

Design Professional will supply all equipment, tools, materials, supplies, equipment, software, etc. required to accomplish the services and tasks as set forth in this Agreement.

8.10 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION:

The Mission Achievement and Success Charter School General Conditions of the Contract for Construction are hereby incorporated to the extent they are not inconsistent with any provisions of this Contract.

8.11 CLAIMS AND DISPUTES:

(a.) If Design Professional believes it has a claim against Owner, it will give written notice to Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after Design Professional first recognizes the conditions giving rise to the Claim, whichever is later.

(b.) For purposes of this section, a Claim is a demand or assertion seeking, as a matter of right, adjustment or interpretation of this Agreement, payment of money, extension of time or other relief with respect to the terms of this Agreement. Design Professional has the responsibility to substantiate Claims.

(c.) The parties will expeditiously attempt to resolve all Claims and disputes in a non-litigious manner. If a Claim has not been resolved after appropriate consultation between Owner and Design Professional, the Claim will be referred to the Chief Procurement Officer of the Owner for action. A decision by the Chief Procurement Officer is a condition precedent to litigation.

8.12 MISCELLANEOUS PROVISIONS:

(a.) Should any provision of this Agreement, at any time, be in conflict with any law, ruling or regulation, or be unenforceable for any reason, then such provision will continue in effect only to the extent that it remains valid. In the event any provision of this Agreement becomes less than operative, the remaining provisions of this Agreement will nevertheless remain in full force and effect.

(b.) Communications by and with Design Professional's consultants will be through Design Professional. Notwithstanding anything to the contrary in this Agreement, Owner has not relinquished its right to communicate with Contractor directly. Design Professional agrees to act as the representative of Owner in connection with any communication by or with Design Professional and/or Design Professional's consultants.

(c.) Owner and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representative of such other party with respect to all covenants of this Agreement. Design Professional will not assign this Agreement without the written consent of Owner.

(d.) Nothing contained in this Agreement will create a contractual relationship with or cause of action in favor of a third party against either Owner or Design Professional.

(e.) Design Professional will indemnify, defend and hold harmless the Owner against all losses, liabilities, lawsuits, claims, expenses (including attorney's fees), costs, and judgments

incurred through third party claims of infringement of any copyright, patent, trademark, or other intellectual property rights.

(f.) All terms and conditions of this contract will be applied to the agreements between the Professional Design Professional and its' sub-consultants.

8.13 INTENTIONALLY LEFT BLANK

8.14 ELIGIBILITY FOR PARTICIPATION IN GOVERNMENT PROGRAMS.

Each party represents that neither it nor any of its management or any other employees or independent contractors who will have any involvement in the services performed or products supplied under this Agreement, have been excluded from participation in any government program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that each party, its employees and independent contractors are not otherwise ineligible for participation in federal programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against each party or its employees or independent contractors. Each party will notify the other immediately upon becoming aware of any pending or final action in any of these areas.

8.15 OTHER APPLICABLE LAWS.

Any provisions required to be included in an Agreement of this type by any applicable and valid executive order, federal, state, or local law, ordinance, rule or regulation will be deemed to be incorporated herein.

8.16 PENALTIES.

The state of New Mexico Procurement Code, Section 13-1-28 et seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kickbacks.

8.17 EXECUTION AND SEVERABILITY.

Each party to this Agreement represents and warrants that the person or persons signing this Agreement on behalf of such party is authorized and empowered to sign and deliver this Agreement for such party. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provision.

8.18 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

In performing the services required under this Agreement, each party will be an equal opportunity employer and will conform to all affirmative action and other applicable requirements; accordingly, each party will neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.

8.19 FOREIGN PAYMENTS.

Payment for service performed by a foreign individual or a foreign corporation while in the U.S. may be subject to 30% tax withholding per IRS Publication 515.

8.20 TAX SEGREGATION (CONSTRUCTION RELATED PROJECTS).

In the performance of the construction related services contemplated under this Agreement, the Design Professional agrees to work with and cooperate with the Owner's Tax Cost Segregation consultant. The Owner's tax cost segregation consultant will be responsible for coordination, oversight, and analysis of the effective application of New Mexico Gross Receipts Tax for each general contractor involved with the construction projects at OWNER. Such services of the segregation consultant will be performed in accordance with New Mexico Statutes and relative regulations governing the application of New Mexico gross receipts tax to tangible personal property acquisition made by OWNER for various construction projects.

8.21 ATTACHMENTS

Attachment A: Rate Guidelines

Attachment B: Document Review Process and Requirements

Attachment C: Design Professional's Personnel

Attachment D: Quality Assurance Plan

Attachment E: OWNER Project Program Format

Attachment F: Project Scope Statement

8.22 ENTIRE AGREEMENT

This Agreement with its incorporated exhibits, if any, constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, commitments, offers, contracts, and writings. Any amendments or further addenda hereafter made will be in writing and executed with the same formality. This Agreement may be amended only by written instrument signed by both Owner and Design Professional. The terms, conditions and specifications contained in OWNER RFP-1248-9 and the Design Professional's response are hereby incorporated into this Agreement.

ARTICLE 9 – BUSINESS ETHICS

9.0 CONFLICT OF INTEREST

During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, Design Professional agrees to maintain business ethics standards

aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner's best interests. Design Professional will disclose to the Owner Purchasing Department the name(s) of any Owner employee who has a direct or indirect financial interest in the Design Professional's firm or in this transaction. A Owner employee has a direct or indirect financial interest in the transaction if presently or in the preceding twelve (12) months the employee or a close relative has an ownership interest in the Design Professional's firm (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Design Professional, is a partner, officer, director, trustee or consultant to the Design professional, has received grant, travel, honoraria or other similar support from the Design Professional, or has a right to receive royalties from the Design Professional.

9.1 OWNER'S BEST INTEREST

Design Professional will take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations will apply to the activities of Design Professional employees, agents, subcontractor, subcontractor employees, consultants of contractor, etc. **All work will be performed so as not to interfere with normal Owner activities. When necessary to disrupt normal activities, the schedule of work, and the areas to be affected must be prior approved in writing by the Owner's authorized representative prior to the commencement of the work.**

9.2 FAILURE TO COMPLY

Design Professional agrees to notify a designated Owner representative within 48 hours of any instance where the Design Professional becomes aware of a failure to comply with the provisions of this article.

9.3 REVIEW OF RECORDS

Design Professional will permit interviews of employees, reviews and audits of accounting or other records by Owner representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Design Professional's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Design Professional in their relations with Owner's current or former employees or employee relatives.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date set forth in the first paragraph of this Agreement.

THE OWNER: Mission Achievement and Success Charter School

BY: _____

JoAnn Mitchell

TITLE: Chief Procurement Officer, Founder and Principal

BY: _____

TITLE:

THE DESIGN PROFESSIONAL:

BY: _____
(Name)

TITLE: _____

ATTACHMENT A

RATE GUIDELINES

Taken from RFP Response

ATTACHMENT B

DOCUMENT REVIEW PROCESS AND REQUIREMENTS

This Plan Review Process will address only those steps which relate directly to the process of review. Normal coordination is, therefore, not described in this document for clarity.

SCHEMATIC

The Plan Review Process begins during the Schematic Design Phase. Schematic Design is initiated once an Authorization to Proceed is issued.

1. Pre-Design Meeting

Attendees: The Design Professional, all sub consultants, and Owner representatives.

Purpose: To review the scope of Project, Project schedule and the Maximum Allowable Construction Cost. The attendees will address the main concerns in the Project and should provide discussion and review of any special or unique requirements. Minutes of the meeting will be prepared by the Design Professional and distributed to the attendees.

2. Schematic Intermediate Review Meeting

Attendees: The Design Professional, all sub consultants, and Owner representatives.

Purpose: The Design Professional and sub consultants will make a presentation to explain the design approach, intent and progress. The presentation will be followed by discussion, questions and answers. Any clarifications or agreements made on Schematic features will be recorded in the minutes. Minutes will be prepared by the Design Professional and distributed to the attendees.

3. Schematic Final Review Process

a. Meeting

Attendees: The Design Professional, all sub consultants, and Owner representatives.

Purpose: The Design Professional and sub consultants will make a presentation to explain the documents, the Project, the functional intent, and the reasons for the particular solution. Review sets of Schematic Design documents will be provided by the Design Professional at or prior to this meeting. The Design Professional will distribute Minutes of the Schematic Intermediate Review Meeting(s), and will prepare, on a separate sheet entitled, "Exceptions to Project Requirements," a list of exceptions. The sub consultants will provide specific information on each discipline as appropriate. If necessary, separate meetings will convene to discuss detail of individual disciplines. A deadline for the submittal of written comments regarding the Schematic will be announced. Minutes will be prepared by the Design Professional and distributed to attendees.

b. Review

Individual reviewers will evaluate aspects of the Project which are of concern to them. Reviewers will prepare written comments for submittal to Owner's Representative prior to the predetermined deadline. All comments will be submitted only on the Review Comment Resolution Form.

c. Comment Response and Resolution

1) The Owner's Representative will receive and organize comments from reviewers.

2) The Owner's Representative will submit the comments to the Design Professional and request written response to the comments by a scheduled date.

3) The Owner's Representative will review the Design Professional's written response to ensure that the resolution is clearly stated; discrepancies will be resolved by coordinating with reviewer and Design Professional.

4) The Owner's Representative will send notice to the Design Professional that the schematic development has been reviewed and approved, subject to any written modifications.

5) Design Professional Commission Campus Landscape Advisory Committee Review (When Applicable)

Concurrent with step 2, the Owner's Representative will arrange for Professional Design Commission review of the schematic by contacting the Project Manager to coordinate with the Commission schedule.

Professional Design Commission approval must be obtained and the Campus Landscape Advisory Committee must conclude its review prior to beginning Design Development.

DESIGN DEVELOPMENT

No initial reviewers' meeting is required. Work will progress directly from the approved schematic documents, once the Project Manager issues the authorization notice.

1. Design Development Intermediate Review Meeting

Attendees: The Design Professional, all sub consultants, and Owner representatives.

Purpose: The Design Professional and sub consultants will make a presentation to explain progress on design development. The Design Professional will distribute a current copy of the "Exceptions to Project Requirements" list. The meeting will include time for discussion, questions and answers. Following the meeting, smaller meetings may be convened by discipline for more detailed review of information. All clarifications and resolutions of Project issues will be recorded by the Design Professional in the minutes of each meeting and will be distributed to all attendees. If discrepancies develop during the process, it is imperative that the Owner's Representative continue the review process until a resolution is reached.

2. Design Development Final Review Process

a. Meeting

Attendees: The Design Professional, all sub consultants, and Owner representatives.

Purpose: The Design Professional and sub consultants will make a presentation on the project. The Design Professional will distribute a current copy of the "Exceptions to Project Requirements" list. A deadline for the submittal of written comments will be announced. Sub-discipline meetings may convene to discuss information in more detail. Minutes will be prepared by the Design Professional and distributed to attendees.

b. Review

Individual reviewers will evaluate aspects of the Projects relevant to their discipline. Reviewers will provide written comments for submittals to the Owner's Representative prior to the announced deadline.

c. Comment, Response and Resolution

1) The Owner's Representative will receive and organize comments from the reviewers.

2) The Owner's Representative will submit comments to the Design Professional and request written response to the comments by a scheduled date.

3) The Owner's Representative will review the Design Professional's written response to ensure that the resolution is clearly stated; discrepancies will be resolved by coordinating with reviewer and Design Professional.

4) The Owner's Representative will send notice to the Design Professional that the design development has been reviewed and approved, subject to any written modifications.

d. Design Review Board and Campus Development Advisory Committee Review

The Owner's Representative will arrange for the reviews.

3. The Owner will accept Design Development (Part 1, Schematic and Design Development) and authorize (1) Construction Documents or, (2) Construction Documents and Call for Bids.

CONSTRUCTION DOCUMENTS

1. Construction Documents Intermediate Review Meeting(s)

Attendees: The Design Professional, all sub consultants, and Owner representatives.

Purpose: During the Construction Documents phase, there will be at least one intermediate review meeting. These meetings will be scheduled in advance to ensure timely preparation by the Design Professional. Particular attention will be paid to recording resolution on outstanding issues, standards, policy, alterations, etc., in the minutes of each meeting. The Design Professional will distribute a current copy of the "Exceptions to Project Requirements" list.

2. Construction Document Final Review Process

a. Acceptance Panel Review

Prior to printing of final review documents, a determination will be made by the Owner's Acceptance Panel that the documents are ready for review. The objective is that all parts of the document set are at least 99% complete. If the Panel decides the documents are not ready, the Design Professional will continue working toward completion until the documents are acceptable. The Acceptance Panel will consist of the Owner's Representative, the Project Manager, Plant Engineering Manager, and the Construction Officer, or their designated representatives.

b. Meeting

Attendees: The Design Professional, all sub consultants, and Owner representatives.

Purpose: Design Professional will address all major components of the project, recent resolutions and all changes. The Design Professional will distribute a current copy of the "Exceptions to Requirements" list. A deadline for the submittal of written comments will be announced. Minutes will be prepared by the Design Professional and sent to attendees.

c. Review

Individual reviewers will evaluate relevant components of the Project. Reviewers will prepare comments for submittal to the Owner's Representative prior to the announced deadline. Owner's Representative will contact reviewers during this step to remind them of the written comment deadline.

d. Comment, Response and Resolution

1) Owner's Representative receives comment from reviewers, organizes the comments.

2) The Owner's Representative submits the comments to the Design Professional, provides further clarification when necessary, and requests a written response to the comments by a scheduled date.

3) The Owner's Representative reviews the Design Professional's response to ensure that the resolution is clearly stated; discrepancies will be resolved by coordinating with reviewer and Design Professional.

4) The Owner's Representative sends notice to the Design Professional that the construction documents have been reviewed and approved, subject to any enclosed written modifications.

e. Confirmation Review

The Owner's Representative will verify that the review comments to the Project Requirements have been satisfactorily addressed prior to authorizing the Design Professional to proceed with printing of bid documents.

DOCUMENTATION REQUIREMENTS

The following lists the documents to be provided by the Design Professional to the extent that the items of Work to which the documents are related are included in Article 4, Design Professional's Responsibilities of the Agreement or are Additional Services agreed to by the Owner and Design Professional. This list is not all inclusive nor is it limited to any items referred to or implied in other parts of the Agreement or normally provided under Article 4 of the Agreement.

ITEM	SCHEMATIC	DESIGN DEVELOPMENT	CONSTRUCTION
	PHASE	PHASE	DOCUMENT PHASE
Specification	System and Material Narrative Description	Outline Specification	Complete Specification
Site	existing conditions	pedestrian circulation	pipe sizes
	site footprints	utility details	connection details
	site entrance	dimensions	contractor parking
	demolition	traffic flow plan	construction area
	site utilities	handicapped flow plan	construction phasing
	utility requirements	lighting plan	site development phasing
	roads and driveways	stairway connections	street use plan
	loading dock location	waste containers	
	future expansion	bicycle facilities	
	walkway locations	site drainage	
	stairway locations	site utilities	
	parking locations	reference elevations	
	waste collection locations		

Landscaping	existing conditic	irrigation plan	soil preparation and specification
	existing irrigation	planting plan	pipe sizes
	irrigation legend		pipng diagrams
			design calculations
			guying details
			existing tree protection
Building Exterior Envelope	typical elevations	typical wall sections	flashing details
	building cross sections	typical window details	roof mounted equipment
	fenestration layout	exterior door details	exterior details
	material designations	roof & drainage plan	roof details
	energy code requirements	parapet & coping details (typ.)_	
	roof layout		
Structural	structural scheme	structural sections	structural details
ITEM	SCHEMATIC	DESIGN DEVELOPMENT	CONSTRUCTION
	PHASE_	PHASE	DOCUMENT PHASE
	written description including seismic analysis of existing bldg. and proposed strengthening techniques	typical floor framing plan	foundation details
	structural legend_	main member sizing foundation plan	beam & column schedules structural notes calculations
Building Interior	typical floor plans (min. 1/16' scale)	all floor plans (min. 1/8' scale) vertical shaft locations	dimensioned floor plans interior details

area use identification and	partition types	finish schedules
area in sq. ft.	min. 1/4' scale_	
circulation paths	defined seating, serving &	door & hardware
preliminary layouts of	kitchen facilities	schedules
major specialized spaces	fixed seating	interior elevations
show flexibility for	equipment and furniture layouts	partition details
all room numbers	wall types	reflected ceiling plans
area tabulations compared to	specialized area floor plans	
program requirements		
code study: existing, area		
separation, etc.		
mechanical, electrical and		
other service rooms		

Elevators	elevator location	elevator shaft section	dimensioned plans
	equipment room location	equipment description	complete specification
	elevator legend		door and frame details
			interior details with lighting
Plumbing & Piping	location of header(s)	water header diagram	pipe sizes
	location of pipe chases	chilled water header diagram	radiation riser diagram
	Fixture locations	steam header diagram	plumbing riser diagram
	Mechanical legend	piping plans	water header diagram
		fixture list	chilled water riser
		material cut sheets	diagram
			coil detail
			convector detail
			water heater detail
			design calculations

HVAC	identify all systems	preliminary calculations	equipment details
	one line flow diagrams	one line duct layout	duct sizes
	energy code requirements	equipment list	installation detail
	special occupancy zones	equipment location	cross sections
	mechanical legend	control diagram	connection to FA &
	air intake and exhaust	sequence of operation	MCC
	location(s)	mechanical room layout	design calculations
		utility shaft layout & sections	equipment cut sheets
Fire Protection (Mechanical)	connection to utility	riser diagram	complete specifications
	location of sprinkler valve	one line layout	sprinkler valve details
	sprinkler legend		design calculations
Lighting	typical spaces w/foot candles	fixture/switching layout	fixture schedule
	energy code requirements	light level calculations	control diagrams
		fixture types	installation details
		lighting cut sheets	lighting calculations
			final energy code calculations
Electric Power	one line service diagram	equipment layout	panel schedules
Distribution	electric vault location(s)	panel location(s)	load calculations
	electric closet location(s)	one line power diagram	fault current calculations
	electric legend	receptacle locations	MCC details
Fire Alarm	connection for monitoring	fire alarm zones	connection details
	panel location	smoke zones	connection to MCC & HVAC
		device locations	riser diagram_
		riser diagram	
Telecommunications_	building & local distrib.	riser diagram(s)	raceway plan(s)
	frame closet loc. & size	material cut sheets	raceway details

	cable tray locations	voice/data outlet locations	
	blackboard locations	device cut sheets	
Service Facilities	loading dock	waste containers	details for all accessory and support apparatus in each area
	service elevator	recycle holding	
	service road	bottled gas area	
		any special waste handling	
		service vehicle parking area	
Handicapped Provisions	access locations	ramp access	details for all associated accessories and provisions
	restrooms		
	accessibility code review		
Commissioning		documentation of design criteria and assumptions	production of the document required in accordance with Owners requirements
		one-line diagrams	
		calculations	
		system zoning	
		sequences of operation	

End of Attachment B

ATTACHMENT C

DESIGN PROFESSIONAL'S PERSONNEL

Taken from RFP Response

ATTACHMENT D

QUALITY ASSURANCE PLAN

Provided by Architect

ATTACHMENT E

OWNER Project Program Format

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Attachment F
Project Scope Statement

(Take from Scope of Work from RFP)