

Date: April 3, 2025

To: Mark Scott, City Manager

From: Scott Overlie, Parks and Opens Space Division Project Manager 

Via: Regina Wheeler, Public Works Director 

Melissa McDonald, Parks and Open Space Division Director 

Subject: Fort Marcy Park Improvements

Vendor Name: Molzen-Corbin & Associates, Inc.

Munis Vendor Number: 1435

ACTION:

Request for Approval of a Professional Services Contract with Molzen-Corbin & Associates, Inc. in the Total Amount of \$200,000 including NMGR for Design and Public Engagement for Improvements at Ft. Marcy Park for a Four-Year Term.

CONTRACT NUMBER:

The Munis contract number is 3250409

BACKGROUND AND SUMMARY:

This project was identified as a priority by Governor Lujan Grisham and the City received Capital Outlay appropriation grant 24-I3142 for \$5,000,000 to plan, design, construct, repair and equip Fort Marcy Park including accessibility, restroom, concession stand, and grandstand improvements. The improvements are necessary due to aging facilities and infrastructure, increased public use, and major events including Zozobra, the Santa Fe Wine and Chile Festival, and Santa Fe Fuego baseball games that now use the park.

Preliminary design and public engagement on this well loved and highly utilized City park will commence in Spring 2025, with an anticipated completion by Spring 2026. Construction costs and schedule for this large project will be determined once the design is complete. A number of priority safety repairs including stair replacement, fence replacement and sidewalk repairs will be completed in the meantime.

ATTACHMENTS:

Professional Services Contract

Quote

Procurement document: Statewide Price Agreement

Certificate of Liability Insurance

Horizons declination

CPO Service Determination Email

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: PARKSTRLS/355

Munis Org Name/Number: PrksTrails/3559980

Munis Object Name/Number: WIP Design/572960

Budget Officer / Designee: Andy Hopkins **Date:** 04/07/2025

Budget Officer Comment/Exceptions: -

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-129, Statewide Price Agreement

The State of New Mexico General Services Department, FACILITIES MANAGEMENT DIVISION "ON CALL"
CONTRACT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND DESIGN PROFESSIONAL ON CALL
CONTRACT, #24-350-0090-00048 expires on 4/23/2028

Chief Procurement Officer (CPO) / Designee:  **Date:** 04/07/2025

CPO Comment/Exceptions:

ASSOCIATED APPROVALS:

IT Components included? ☐ Yes | ☒ No

Approval: **Title:** **Date:**

Comment/Exceptions:

Vehicles included? ☐ Yes | ☒ No

Approval: **Title:** **Date:**

Comment/Exceptions:

Construction to City Facilities, Furniture, and/or Fixtures included? ☐ Yes | ☒ No

Approval: **Title:** **Date:**

Comment/Exceptions:

Is this an externally funded purchase? ☒ Yes | ☐ No

If yes, what is the issuing agency: NMDFA 24-I3142

Approval: 
ERIKA LUJAN (Apr 10, 2025 07:46 MDT) **Title:** Grants Manager **Date:** 04/10/2025

Comment/Exceptions:

Is this a Capital Asset or Project? ☒ Yes | ☐ No

Project Ledger Number: PWD2535527

Approval: Josie Bolden

Title: Controller

Date: 04/10/2025

Comment/Exceptions: _____

CITY OF SANTA FE
PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between the City of Santa Fe, New Mexico, hereinafter referred to as the “City,” and **Molzen Corbin**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Parties.

RECITALS

WHEREAS, the Chief Procurement Officer of the City has made the determination that this Agreement is in accordance with the provisions of the New Mexico Procurement Code (NMSA 1978, 13-1-28 et seq.) pursuant to NMSA 1978, section 13-1-135; and

WHEREAS, the Contractor is one of such requisite and qualifications and is willing to engage with the City for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in the Agreement; and

The City and the Contractor hereby agree as follows:

1. Scope of Work

The Contractor shall provide the following services-for the City:

Professional Design Services for the City of Santa Fe, Ft. Marcy Park Improvements Project. See quote “Exhibit A” for full scope of work and services attached hereto.

2. Standard of Performance; Licenses

A. The Contractor does hereby accept its designation as a professional service, rendering architectural and engineering services for the City, as set forth in this Agreement. The Contractor represents that Contractor possesses the personnel, experience, and knowledge necessary to perform the services described under this Contract.

B. The Contractor agrees to obtain and maintain throughout the term of this Contract, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives, and subcontractors.

3. Compensation

A. Payment. The total compensation under this Agreement shall not exceed Two Hundred Thousand Dollars (\$200,000), including New Mexico gross receipts tax. **This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under**

this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

B. Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. **Notice of Extended Payment Provision For Grant Funded Contracts.** This contract allows the owner to make payment within 45 days after submission of an undisputed request for payment.

4. Term

THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Contract shall terminate **four (4) years from date of final signature** unless terminated pursuant to paragraph 5 (Termination) and paragraph 6 (Appropriations).

5. Termination

A. Grounds. The City may terminate this Agreement for convenience or cause. For contracts within their authority, the City Manager or their designee is authorized to provide the notice of termination, otherwise such notice of termination shall be provided by the Mayor or their designee as authorized by the Governing Body. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

B. Notice; City Opportunity to Cure.

1) The City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 6, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's

receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

6. Appropriations

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

7. Status of Contractor

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

8. Assignment

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

9. Subcontracting

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

10. Release

Final payment of the amounts due under this Contract shall operate as a release of the City, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Contract.

11. Confidentiality

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

12. Product of Service -- Copyright

All materials developed or acquired by the Contractor under this Contract shall become the property of the City and shall be delivered to the City no later than the termination date of this Contract. Nothing developed

or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

13. Conflict of Interest; Governmental Conduct Act

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

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

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

14. Amendment

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

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

15. Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits and Schedules constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the statements in the body of this Agreement, and the related Exhibits and Schedules, the statements in the body of this Agreement shall control.

16. Merger

This Contract incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written contract.

This Contract is issued against the state or agency Master Agreement, established and maintained by the State of New Mexico General Services Department, FACILITIES MANAGEMENT DIVISION "ON CALL" *CONTRACT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND DESIGN PROFESSIONAL ON CALL CONTRACT*, #24-350-0090-00048., and through this language hereby incorporates this agreement by reference and is included in the order of precedence.

No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. Penalties for violation of law

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

18. Equal Opportunity Compliance

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

19. Applicable Law

The laws of the State of New Mexico shall govern this Contract, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, section 38-3-2. By execution of this Contract, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Contract.

20. Workers Compensation

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

21. Professional Liability Insurance

Contractor shall maintain professional liability insurance throughout the term of this Contract providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Contract.

22. Other Insurance

If the services contemplated under this Contract will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Contract, the following insurance coverage(s), naming the City as additional insured.

A. **Commercial General Liability** insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. **Business Automobile Liability** insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

C. **Broader Coverage and Limits.** The insurance requirements under this Contract shall be the greater of (1) the minimum coverage and limits specified in this Contract, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor hereunder.

D. Contractor shall maintain the above insurance for the term of this Contract and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

23. Records and Financial Audit

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

24. Indemnification

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

25. New Mexico Tort Claims Act

Any liability incurred by the City of Santa Fe in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act.

26. Invalid Term or Condition

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

27. Enforcement of Contract

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

28. Notices

Any notice required to be given to either party by this Contract shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: Parks and Open Space Division Director
 PO Box 909
 Santa Fe, NM 87504-0909
 mamcdonald@santafenm.gov

To the Contractor: Molzen Corbin
 2701 Miles Rd.,
 Albuquerque, NM 87106
 jpate@molzencorbin.com

29. Authority

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

30. Non-Collusion

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

31. Default/Breach

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the City may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages, and the City may also seek all other remedies under the terms of this Agreement and under law or equity.

32. Equitable Remedies

The Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The City's rights to obtain

equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that the City may have under applicable law, including, but not limited to, monetary damages.

33. Default and Force Majeure

The City reserves the right to cancel all, or any part of any orders placed under this Agreement without cost to the City, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:


Mark Scott (Apr 10, 2025 18:13 MDT)

MARK A. SCOTT, CITY MANAGER

DATE: 04/10/2025

CONTRACTOR:



JOHN PATE, VICE PRESIDENT, ARCHITECTURE

DATE: Mar 20, 2025

NMBTIN#: 01-305771-00-5

ATTEST:


ANDREA SALAZAR (May 01, 2025 12:11 MDT)

ANDREA SALAZAR, CITY CLERK 

CITY ATTORNEY'S OFFICE:


Kevin L. Nault (Mar 24, 2025 13:36 MDT)

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:


EMILY OSTER, FINANCE DIRECTOR

MOLZENCORBIN

January 13, 2025

Mr. Scott Overlie
Project Administrator
City of Santa Fe Parks Division
1142 Siler Road, Bldg. C
Santa Fe, New Mexico 87505

EXHIBIT A

**RE: Fort Marcy Park Improvements 2025
Proposal for Professional Design Services for Owner's Representative**

Dear Mr. Overlie:

Molzen Corbin is pleased to present this proposal for Professional Design Services to assist the City of Santa Fe to plan and coordinate improvements within Fort Marcy Park. Funding for the park improvements is state grant money totaling \$5,000,000.00 that has a reversion date of June 30, 2028.

We will begin immediately upon receiving a Notice to Proceed and will work continuously until finished.

Specific scope items included in this proposal:

- Site investigation and code review that may include topographic surveying, geotechnical reports, and utility surveys,
- Preliminary designs and renderings to accommodate public meetings and city coordination efforts,
- Stakeholder engagement & public outreach throughout the life of the project that includes invitations, agendas, meeting minutes, and subsequent recommendations and design revisions,
- Prioritizing & phasing of discrete improvements,
- Budgeting and procurement assistance for discrete improvements,
- Integration of completed improvements into planning and overall project management efforts,
- Contracting consultants as needed, and
- Any additional task requested as appropriate for the improvements to the park:
 - • Design of new staircase behind the concession stand, staircases at parking lot, and staircase at "Zozobra" hill.
 - • Partial coverage of the eastern arroyo to enhance emergency exits.
 - • Preliminary design for a low water crossing in the arroyo.
 - • Replacement or retrofit of the concession stand and bathrooms.
 - • Upgrades to the grandstands and retaining walls adjacent to parking lots
 - • Accessibility improvements throughout the park
- Key activities include:
 - • Community outreach and stakeholder engagement
 - • Cultural and historical assessments
 - • ADA compliance assessment
 - • Fire safety routing
 - • Hydrological modeling
 - • Permit acquisitions (Army Corps, FEMA)

It is anticipated that as specific discrete improvement scopes are identified as viable, that separate task orders will be created. Separate proposal will be submitted for typical lump sum design, procurement, and construction administration efforts.

We propose to accomplish this work under the terms and conditions of our existing STATE OF NEW MEXICO GENERAL SERVICES DEPARTMENT, FACILITIES MANAGEMENT DIVISION "ON CALL" *CONTRACT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND DESIGN PROFESSIONAL ON CALL CONTRACT # 24-350-0090-00048*. We propose to perform this work on a Time & Materials Basis for an amount not to exceed \$200,000.00 without express approval by the City. Applicable reimbursable expenses and New Mexico Gross Receipts Tax are included in this amount.

MOLZENCORBIN

If you have any questions or require additional information, please contact me at (505) 242-5700.

Sincerely,

MOLZEN CORBIN

CITY OF SANTA FE

John Quinn Pate, RA/RLA
Vice President, Architecture

Scott Overlie
Project Administrator

JQP:jgo

Date: _____

GSD CONTRACTS REVIEW BUREAU
Joseph Montoya Building, Rm 2016
Santa Fe, NM 87505

PROFESSIONAL SERVICES CONTRACT BRIEF
CRB, Revised 02/20
(CONTRACT BRIEF MUST BE TYPED)

<div>2</div> <div>4</div>	<div>3</div> <div>5</div> <div>0</div>	<div>0</div> <div>0</div> <div>9</div> <div>0</div>	<div>0</div> <div>0</div> <div>0</div> <div>4</div> <div>8</div>	<div></div> <div></div>
FY	Agency Code	Organization Code	Contract No.	Amend. No.

Contractor Name:	Molzen-Corbin & Associates Inc.		
Contractor Address:	2701 Miles Road, Albuquerque New Mexico 87106	Phone:	505-242-5700
Agency Contact:	Crystal Bowers	Phone:	505-827-1771

Single-Year Contract:	Appropriation Period:	Contract or Amendment Amount:
\$ <div>Total Contract Amount</div>	FY24-FY28	General Fund 0.00
Multi-Year Contract:		Other State Funds \$2,000,000.00
\$ 2,000,000.00 <div>Total Contract Amount</div>		Federal Funds 0.00
		Total \$2,000,000.00

Contract Term: From:	<div>0</div> <div>0</div> <div>/</div> <div>0</div> <div>0</div> <div>/</div> <div>0</div> <div>0</div> <div>0</div> <div>0</div>	To:	<div>0</div> <div>0</div> <div>/</div> <div>0</div> <div>0</div> <div>/</div> <div>0</div> <div>0</div> <div>0</div> <div>0</div>
	(GSD Approval date to be filled in by Contracts Review Bureau)		(Termination Date)

Retroactive: Y/N Date: / /

Non-profit: Y/N

☒ Operational Budget ☐ Capital Outlay

BRIEF DESCRIPTION OF SERVICES AND/OR REASON FOR AMENDMENT:

For On-Call Architectural and Engineering and related consultant services providing Programming and Design Consultation.

PROCUREMENT PROCEDURE-Check with X the applicable citation

- Section 13-1-125 NMSA 1978, small purchase contract (does not exceed \$60,000 excluding gross receipts tax).
- Section 13-1-120 NMSA 1978, competitive proposal for architect/engineer/landscape/architect/surveyor.
- X

Section 13-1-111 NMSA 1978, competitive sealed proposal (contract over \$60,000).
- Section 13-1-129 NMSA 1978, contract is based upon Price Agreement #
- Section 13-1-129 NMSA 1978, contract is based upon GSA (please provide all required information)
- Section 13-1-126 NMSA 1978, sole source procurement (requires written determination and GSD approval).
- Section 13-1-127 NMSA 1978, emergency procurement.

REQUIREMENTS-Enter Y (yes) to verify the following mandatory requirements:

- Y

The agency certifies to GSD that all relevant requirements of the Procurement Code have been followed.
- Y

The agency certifies to GSD that the contractor will perform at all times as an independent contractor for the purpose of IRS tax compliance and is not performing services as an employee of the agency.
- Y

The agency certifies to GSD that the agency has performed a legal review and the contract is in compliance with all federal and state laws, rules and regulations.

OTHER REQUIREMENTS-Enter Y (yes), N (no) or N/A (not applicable) to each of the following:

- Y

The agency certifies to GSD that Performance Measures have been outlined as required (attach valid section of strategic plan).
- Y

The agency certifies to GSD that the contract complies with GSD rules regarding indemnification and insurance.
- N/A

The agency certifies to GSD that the requirements of the Governmental Conduct Act, Section 10-16-1 NMSA 1978 regarding conflict of interest with public officers or state employees have been followed. The agency certifies to GSD that the Attorney General's review has been obtained because:

N

 Contract with former state employee

N

 Contract with present state employee

N/A The agency certifies to GSD that any required performance bonds have been obtained, Section 13-1-148 NMSA 1978

<i>Robert Doucette</i>	Cabinet Secretary	4/23/2024
Cabinet Secretary, Agency Head or Designee	Title	Date

GSD USE ONLY

Category	<div></div>	Date Received CRB	<div></div>	Comments:
Status	<div></div>	Date Approved CRB	<div></div>	
Amendment Type	<div></div>	Staff	<div></div>	
Amendment Type	<div></div>			
PURCHASE DOCUMENT				
Number	Amount	Date to FCD	Date from FCD	



STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT, FACILITIES MANAGEMENT DIVISION
"ON CALL" CONTRACT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND DESIGN PROFESSIONAL
PART A – THE AGREEMENT

On Call Contract #: 24-350-0090-00048

This Agreement entered into this _____ day of _____, 202____, by and between:

The State of New Mexico:

Facilities Management Division (FMD)
Anna Silva, Division Director
General Services Department
PO Box 6850
2542 Cerrillos Road
Santa Fe, New Mexico 87502
TELEPHONE: (505) 827-2141
FAX: (505) 827-2181

Notice Email: Anna.Silva2@gsd.nm.gov

Hereinafter "Owner"; and

The Architect/Engineer:

Company : Molzen-Corbin & Associates Inc.

Physical Address: 2701 Miles Road SE

Mailing Address: 2701 Miles Road Se

City, State Zip: Albuquerque New Mexico 87106

Contract Design Professional: Gerald B. Paz

Professional Certificate #: 10521

Company Phone: (505)242-5700

Cell Phone: (505) 242-5700

Notice email: jpaz@molzencorbin.com

Hereinafter "Design Professional"

FOR THE FOLLOWING SERVICES:

In general and as specified in detail in this Agreement, for the design of construction projects for new buildings, various alteration, remodel, retrofit, and new construction projects to improve facility infrastructure, buildings and building systems, deficiency investigations, LEED® consulting, Energy Star consulting plus design services for construction/renovation of water and wastewater projects, site and drainage improvements, water distribution systems, hydrology reports, historic assessments, energy modeling, storm water management, environmental assessments, traffic studies, geological reports, and hourly services including, but not be limited to: cost estimates; cost and schedule analysis to include status of cost and schedule performance of projects; plan review to include review of construction drawings for maintainability and assess fitness with LEED and/or Energy Star objectives; feasibility studies; determining and drawing existing conditions; site investigations including geo-technical reports, topographical studies and hazardous materials studies; statutory and regulatory requirements support; data collection in support of FMD programs; general or specific specifications; project analysis and recommendations for validity of claims/ time extensions; conference/meeting support assistance; and design and production of visual media products in support of the FMD mission.

RECITALS

WHEREAS, the Design Professional was selected pursuant to the Architect, Engineer, Landscape Architect, and Surveyor Selection Committee pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978; and

WHEREAS, the Owner is authorized to enter into a contract to design and construct specific Projects pursuant to Sections 15-3B-4(10), 15-3B-6, and 15-3B-17 NMSA 1978; and

WHEREAS, the Owner must hire a registered Design Professional of New Mexico whenever any public work involves architectural services, pursuant to Section 61-15-9 (A), NMSA 1978, or engineering and surveying services, pursuant to Section 61-23-26, NMSA 1978; and

WHEREAS, the Design Professional hereby represents that it employs the named Project Design Professional, and that such Project Design Professional is a registered Design Professional of New Mexico; and

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

ARTICLE 1 -THE CONTRACT DOCUMENTS

1.1 **Contract Documents.** The Contract Documents consist of the following:

Part A – The Agreement

Part B – The General Conditions

Additional Requirements if Necessary: Exhibit A- Work Order; Exhibit B- Consultant List; Exhibit C- Pay Provider Request. (Attach)

1.2 **Fully Incorporated.** These documents just above in 1.1 Contract Documents form the Contract, and all are as fully a part of the Contract, as if attached to this Agreement, or repeated herein.

1.3 **Inconsistencies.** In the event of conflicts in the Contract Documents, the most restrictive or otherwise most beneficial to the Owner shall apply to all similar conditions. Other rules for conflicts in the Contract Documents shall be that:

1.3.1 Codes and applicable law shall govern over all other Contract Documents

1.3.2 Addenda/Amendments shall govern over all other Contract Documents and subsequent Addenda/Amendments shall govern over prior Addenda/Amendments only to the extent modified;

1.3.3 General Conditions shall govern over all sections of the Contract Documents to include any issued Work Orders unless expressly identified in Section C of the Work Order, and/or except as modified by Addenda/Amendments in writing.

1.3.4 Additional Requirements

1.3.5 Any errors, inconsistencies or omissions discovered by the Design Professional shall be reported promptly in writing along with a recommendation for correction to the Owner for appropriate action.

ARTICLE 2 -CONTRACT TERM

2.1 **Termination.** This Agreement shall terminate forty-eight (48) months from the Contracts Review Bureau (CRB) of the State Purchasing Division approval unless terminated sooner pursuant to terms of this Agreement.

ARTICLE 3 -CONTRACT SUM LIMITS

3.1 **Cumulative Maximum.** The maximum amount to be paid for the duration of this Agreement shall not exceed \$7,500,000.00 including, but not limited to, Basic Services, Additional Services and Reimbursable Expenses and gross receipts taxes, as terms of this Agreement.

3.2 **Work Order Maximum.** Each Work Order issued under this Agreement shall not exceed \$650,000.00.

3.3 **Amount Increases.** If the NMSA 13-1-154.1 statute is revised during the term of this Agreement, the Agreement may be amended to increase the amount(s) specified in 3.1 and 3.2.

ARTICLE 4 -WORK ASSIGNMENTS AND WORK ORDERS

4.1 **Work Assignment.** The Owner, at its sole discretion, shall determine what work is assigned to the Design Professional in a fully executed Work Order.

4.2 **Proposed Work Order.** During the term of the contract, The Owner will present each identified project to the Design Professional with a scope of work, proposed schedule, and proposed fee as a Work Order Draft in

accordance with the terms of this agreement.

- 4.3 Design Professional's Proposal.** Upon receipt of the Work Order Draft and within 14 days of receipt, the Design Professional will provide a detailed cost/work proposal for the identified project consistent with the Work Order Draft.
- 4.4 Owner's Determination.** Upon receipt of the cost/work proposal from the Design Professional and within 7 days of receipt, the Owner will review and make a determination of acceptance of the Design Professional's proposal.
- 4.5 Work Order Plan.** Upon approval and assignment of a specific Work Order, the Design Professional shall provide to the Owner's Project Manager within 14 days, a written schedule and budget describing time frames for completing each phase of work for the Work Order, as well as the number of hours, costs, and personnel to be dedicated to the assignment, including any subcontractor.
- 4.6 Purchase Order.** The Owner's Project Manager shall initiate the Purchase Order process and forward it to the Design Professional when issued.
- 4.7 Commencement of Work.** No work shall begin without a signed Work Order and approved Purchase Order.

ARTICLE 5 -INITIAL MAXIMUM ALLOWABLE CONSTRUCTION COST (MACC)

- 5.1 Initial MACC.** The initial MACC shall be identified in the Work Order subject to revision under the terms of this Agreement.

ARTICLE 6 -GENERAL AND SPECIAL PROVISIONS

- 6.1 Applicable Law, Jurisdiction and Venue.** This Agreement shall be governed exclusively by the provisions hereof, and by the laws of the State of New Mexico. Jurisdiction to resolve any disputes arising from this Contract or from any activity associated with the Work on the Project shall be vested exclusively in the District Courts of the State of New Mexico, with proper venue to be determine subject to the laws of the State of New Mexico. Any corporation, Limited Liability Company or other business entity entering into this Contract with Owner must be qualified to do business in the State of New Mexico and hereby submits to the jurisdiction of the Courts of New Mexico.
- 6.2 Definition of Terms.** Terms used in this Agreement, which are defined in the Conditions of the Contract, shall have the meanings designated in those Conditions. Terms used in this Agreement, which are defined in the New Mexico Procurement Code, shall have the meanings designated in said Code, if not defined in the Conditions.
- 6.3 Effective Date of Contract.** This Agreement shall not be effective nor binding until signed by the Owner and Design Professional and all parties for whom a signature is required by the terms and provisions of this Contract
- 6.4 Status of Design Professional and Employees.** The Design Professional and his agents and employees are independent contractors, and are not employees of the State of New Mexico and are not entitled to the benefits afforded to employees of the State of New Mexico.
- 6.5 Limitation on Authority of Design Professional.** The Design Professional agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico unless the Design Professional has express written authority to do so, and then only within the strict limits of that authority.

- 6.6 Notices.** All notices given, or which may be given, by either party to the other shall be in writing and shall be deemed to have been fully given when emailed to the email address for the other party shown on Page 1 of this Agreement or when deposited in the United States mail, postage prepaid. If the notice is a notice of termination of work, the notice by mail shall be given by certified mail, addressed to the appropriate address for the recipient party set forth herein. Nothing herein contained shall preclude the giving of any such written notice by personal service. The email address or address to which notices shall be sent may be changed by written notice given in the manner specified in this subparagraph.
- 6.7 Gender, Singular/Plural.** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.
- 6.8 Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.
- 6.9 Distribution of Copies of Contract.** Fully executed copies of this Agreement shall be provided to the Owner and the Design Professional and to such other parties associated with the Project as requested by the Owner or Design Professional.
- 6.10 Documents Provided by Design Professional.** The Design Professional shall have any bonding company issuing any performance or payment bond provide a copy of any such bonds directly to the Owner. The Design Professional shall have any insurance company or insurance agency issuing any insurance coverage relevant to this Contract provide the Owner with an appropriate Certificate of Insurance.
- 6.11 Severability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 6.12 Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party of any term, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term or condition thereof
- 6.13 Entire Agreement.** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Contract, and all such conditions, understandings, and agreements have been merged into this written Contract. No prior contract, condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
- 6.14 Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.
- 6.15 Words and Phrases.** Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

6.16 Relationship of Contract Documents. The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

6.17 New Mexico Employees Health Coverage. Design Professional shall comply with all federal and state laws and regulations regarding the obligation of employers to provide health insurance for employees. If the Design Professional has more than fifty (50) full-time-equivalent employees, the Affordable Care Act applies. If the Design Professional has between two (2) and fifty (50) full-time-equivalent employees, the Design Professional shall notify the employees of the availability of health insurance through be Wellnm online at <http://www.bewellnm.com>.

PART A PROFESSIONAL SERVICES AGREEMENT SIGNATURE PAGE

TAXATION AND REVENUE DEPARTMENT: The records of the Department reflect that the Design Professional is registered to pay gross receipts and compensating taxes under New Mexico Tax ID Number 01-305771-00-5 and Federal Tax ID Number 85-0166212.

Signature: AnnMarie Lucero

Printed Name: AnnMarie Lucero

Title: District Mgr.

Date: 4/19/2024

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Signature: Alexis Johnson

Printed Name: Alexis Johnson

Title: Acting General Counsel and Deputy FMD Director-legal

Date: 4/19/2024

APPROVED

FMD Staff Architect

Signature: Martin Kuziel

Printed Name: Martin Kuziel

Title: Staff Architect GSD

Date: 4/19/2024

APPROVED (Continued)**FMD Director**Signature: Anna SilvaPrinted Name: Anna SilvaTitle: Deputy Cabinet SecretaryDate: 4/22/2024**General Services Division Chief Financial Officer**Signature: Silvia O. RodartePrinted Name: Silvia O. RodarteTitle: Chief Financial OfficerDate: 4/22/2024**General Services Division Cabinet Secretary or Designee**Signature: Robert DoucettePrinted Name: Robert DoucetteTitle: Cabinet SecretaryDate: 4/23/2024**Management and Contracts Review Bureau, State Purchasing Division**

Signature: _____

Printed Name: _____

Title: _____

Date: _____



STATE OF NEW MEXICO
FACILITIES MANAGEMENT DIVISION
CONTRACT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND DESIGN PROFESSIONAL
PART B - GENERAL CONDITIONS (Common)

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ARTICLE 1 - GENERAL CONDITIONS

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

1.1 BASIC DEFINITIONS

1.1.1 DESIGN PROFESSIONAL: The firm named in this Agreement which employs a registered Design Professional of New Mexico or an individual registered Design Professional of New Mexico. In the instance of a firm, the term "Design Professional" shall include the Project Design Professional.

1.1.2 CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the Facilities Management Division (FMD), General Services Department, State of New Mexico.

1.1.3 CODES: All applicable federal, state, and local codes applicable to the Project.

1.1.4 CONSULTANT: Any individual, firm, partnership, corporation or other entity that enters into an agreement with the Design Professional contracting with Owner for the purposes of fulfilling, or assisting the Design Professional in fulfilling the services required by this agreement between the Design Professional and Owner.

1.1.5 DIRECT SALARY: The gross wages, which do not include costs of employer beyond the amounts of the paychecks.

1.1.6 GOVERNING AUTHORITY: The Governing Authority for the award of construction contracts is the State Board of Finance, and the Governing Authority for the execution of construction contracts is the Director of the Facilities Management Division (FMD), General Services Department.

1.1.7 MACC: Maximum Allowable Construction Cost is the total sum available for construction purposes, and may include Moveable Equipment, but excludes professional fees, Gross Receipts Tax, Owner's contingency funds and acquisition costs, and other costs which are the responsibility of the Owner as described in Article 5 and Article 6 of this Agreement.

1.1.8 OWNER: The Facilities Management Division, General Services Department, State of New Mexico.

1.1.9 MOVEABLE EQUIPMENT (FURNITURE, FIXTURES AND EQUIPMENT [FF&E]): Includes furnishings not provided as part of the construction work such as chairs, tables, desks, etc. Includes equipment that is not fixed to the building structure and/or is not permanently wired or plumbed in. If included as an Additional Service, Moveable Equipment will be designed by the Design Professional in accordance with the terms of this Agreement, and may be installed by the construction contractor(s) as reflected under the appropriate FMD Construction Contract. (Telecommunications and Data/Internet Network design is part of Basic Services.)

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

1.1.11 PROJECT DESIGN PROFESSIONAL: The individual registered Design Professional of the State of New Mexico who shall sign and affix his New Mexico Design Professional's Seal to all plans, designs, drawings, specifications, and reports that involve the Project. The Project Design Professional shall be mutually agreed upon by Owner and Design Professional at the time this Agreement is entered into by the parties and shall be named herein.

1.1.12 REIMBURSABLE EXPENSES: Expenses not included in Basic or Additional Service compensation and are actual, incidental expenditures made by the Design Professional or its employees in the interest of the Project (while performing professional services pursuant to this Agreement) and limited in accordance with the Reimbursable Article of this Agreement unless otherwise authorized in writing by the Owner.

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

1.1.14 USER (OR USER AGENCY): The State agency or agencies or designated entity for whose use the Project is being constructed.

1.1.15 USER REPRESENTATIVE: The individual designated by the User with the authority to bind the User with respect to this Agreement. See also Article 4 herein.

1.1.16 OTHER DEFINITIONS: Definitions that may be defined in this Agreement, Work Order or in the Construction Contract.

1.2 PROFESSIONAL SERVICE STANDARDS

All Services provided by the Design Professional shall comply with the following standards:

1.2.1 TIME AND SCHEDULE

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

The Design Professional shall submit a Gantt chart schedule including an initial baseline, durations, start and end dated and percent complete, for the Owner's written approval and as a condition precedent to this Agreement or Work Order as appropriate. A schedule for the performance of the Design Professional's services shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause not within the control of the Design Professional, be exceeded by the Design Professional. The schedule shall be updated as required elsewhere in this Agreement or Work Order as appropriate. Failure of the Design Professional to perform within this schedule, except through authorized extensions thereto, shall constitute a basis for termination and/or withholding of payment until schedule compliance is achieved by the Design Professional.

All time limits stated in this Agreement are of the essence in the performance of this Agreement.

1.2.2 STANDARDS, POLICIES AND GUIDES: The Owner has adopted certain design standards, policies, and guides in force at the time of execution of this Agreement or Work Order as appropriate that shall be incorporated into the Design Professional's Services. The Design Professional shall comply with all applicable design standards, policies, guides, and submission requirements as set forth in the FMD Capital Projects Design Procedures.

1.2.3 MEETINGS: The Design Professional shall be in attendance at, and record minutes of, all meetings required by this Agreement or Work Order as appropriate throughout the course of the Project as set forth herein. The Design Professional shall initiate additional meetings germane to the Agreement when authorized, in writing, by the FMD Project Manager. The Design Professional shall distribute copies of meeting minutes to participants and other interested parties as directed by the FMD Project Manager within seven (7) calendar days. The Design Professional consultants shall attend each meeting as appropriate or as requested by the FMD Project Manager.

1.2.4 MONTHLY PROGRESS REPORTS: The Design Professional shall submit monthly progress reports of design/construction activities to the FMD Project Manager. Failure to submit monthly reports may result in delay to the Design Professional's progress payments. The report shall include:

- A. Activities completed and items pending since last report
- B. Projected progress
- C. Comparison of schedule to actual progress
- D. Decisions or information required

1.2.5 USER REPRESENTATIVE INFORMATION: The Design Professional shall request from the User Representative the following:

- A. Information sufficient for the Design Professional to develop program criteria including the User's goals, objectives, and needs, and the organizational chart of individuals, movable equipment, fixtures, furnishings, and equipment that shall occupy the Project.
- B. To the extent practicable and reasonable, the Design Professional shall incorporate the User Representative's requests into the documents for construction; however, the Design Professional is responsible solely to the Owner for the types of material incorporated into the construction, the size of the facilities constructed, and to design within the MACC.
- C. A list (by manufacturer and model number) of special equipment (other than 110 volt, 60HZ, requiring less than 10 amps) that requires utility services, including but not limited to telecommunication equipment such as data transmission and computer lines that shall be designated by Department of Information Technology (DoIT), Infrastructure Voice Radio Network Bureau and Data Network & Internet Bureau.

1.2.6 TELECOMMUNICATIONS/ INTERNET EQUIPMENT: As a Basic Service, telecommunications and internet equipment or radio equipment for state facilities generally falls under the jurisdiction of the Department of Information Technology (DoIT). DoIT standards must be followed. The Terms of this Agreement dictate when this equipment is to be included in the Project. If included, the Design Professional shall coordinate with DoIT, User Agency IT Bureau(s) and other related utility providers for all related requirements to be included in the Project.

1.2.7 PROJECT LEGISLATION OR AUTHORIZATION: The Design Professional shall request from the Owner and the User Agency copies of documents supporting the funding request that were presented to the State Legislature or other regulatory agencies that provided funds for construction of the envisioned facility. These documents will be furnished for information only. The Owner will establish a budget for utilization by the Design Professional in the performance of the services.

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

1.2.9 SOFTWARE REQUIREMENTS:

- A. Drawing Formats. All CAD drawings shall be supplied in PDF format as well as in DWG format and be readable by the Owner-supported CAD desktop software (Autodesk AutoCAD). Being 'readable' means the ability to open a file without any errors (such as proxy, font substitution, etc.) and with objects, layers, and other file properties remaining intact.
- B. AutoCAD DWG files must have x-ref base drawing attached or included with the drawings.
- C. Other Formats. File formats for word processor documents, spreadsheet documents, or slide presentations shall be those used by the Microsoft family of office software such as Word, Excel, and PowerPoint. Contact the Owner for version. Macros may be included with these documents provided they are virus free, their function is explained next to the code, and they are not write protected.
- D. Graphics shall be submitted in TIF, GIF, JPG, CALS, or PDF file format (compressed image formats only). This option is intended for photos, conceptual sketches, etc., and not to indicate that raster file drawings will be accepted in place of AutoCAD DWG files.
- E. Data file formats for projects that employ information contained in a database or spreadsheet shall be those used by one of the following: Oracle, Microsoft Access, Microsoft SQL, or Microsoft Excel. All linkages of non-graphical data with graphic elements, relationships between database tables, and report formats shall be maintained. All database tables shall conform to the structure and field naming guidance provided by the Owner. The Design Professional shall confirm database file format preference with the Owner prior to issuance of database file.
- F. File formats for project management documents shall be either that used by Microsoft Project or hard copy. Confirm file format with the Owner. Save project files with baseline.
- G. Deliverables integrating multiple file formats may be submitted as a PDF (version 4 or later) in addition to the base file structure. Examples include reports, photographs, and manuals created by using a variety of software packages and file formats. Confirm deliverable format preference with the Owner.
- H. Building Information Modeling (BIM). Projects and project teams are encouraged to utilize 3D object model and other building information model technology and software applications (including during project stages of planning, design, construction, and handover to space management and facility operations and maintenance). Outputs from these applications are acceptable as deliverables to the Owner, provided that 2D output is also submitted that fully complies with all provisions herein.

1.2.10 CONSULTANTS: The Design Professional shall employ, or engage, and be contractually responsible for, consultants necessary for the performance of the services herein described and required to complete the Project scope. The Design Professional shall complete and submit Exhibit A listing consultants to be used on the Project. The Design Professional shall not engage any consultant to which the Owner has reasonable objection.

1.2.11 KEY PERSONNEL AND CONSULTANTS. The Design Professional's key personnel and consultants designated for the Project shall remain assigned for the duration of the Project. Any substitutions of the Design Professional's key personnel and consultants require written notification to the Owner and prior written consent of the Owner. Owner may require substitution of any personnel or consultants provided that Owner has first notified the Design Professional in writing and allowed a reasonable period for adjustments and/or corrections.

1.2.12 STANDARD OF CARE: The Design Professional represents that its officers, agents, employees and consulting professionals shall possess the experience, knowledge, and character necessary to qualify them individually for the services to be performed by them under this Agreement. All services shall be performed in accordance with the standards of their respective profession. Such affirmation by consultants, sub consultants, joint ventures, and agents shall not be construed as a diminution of the Design Professional's liability and responsibilities to the Owner.

1.2.13 APPLICATION OF PROFESSIONAL SEALS: Final technical reports and all bidding documents shall contain a legible seal, signature, date and license expiration date of the design professional responsible for the document or under whose supervision

the document was prepared. For project manuals and technical reports the seal shall be provided by the design professional responsible for the overall coordination of the project. If more than one design professional has responsibility for portions of the work, additional seals may be provided on the cover, or on a separate signature sheet immediately following the table of contents.

1.2.14 REVIEW PROCESS: Submit documents for review as required by the Agreement or Work Order as appropriate. The Design Professional shall provide five (5) sets of review documents for Owner for each review. Following the reviews, the Design Professional shall respond to the FMD Project Manager in writing to all review comments and questions within fourteen (14) calendar days.

1.3 FACILITY MAINTENANCE DESIGN

1.3.1 Ease of maintenance and the ability to repair major items of installed equipment by replacement are essential to the Project. To ensure that these services can be adequately performed after the Project is accepted by the Owner, the Design Professional

- A. In all relevant Contract Documents, design and provide for all major installed equipment in the Project, including but not limited to removal, access, maintenance, and storage space needs. In addition, all installed equipment systems shall be appropriately identified and labeled to describe the capacities, flows, and other pertinent information related to their maintenance and safe operation;
- B. Specify only equipment that can be readily maintained by the User or other qualified commercial repairmen who are proximate to the location of the Project
- C. Provide Construction Documents that accurately depict the installation of all major items of installed equipment and which provide reasonable detail on all other major systems to be installed; and
- D. At the completion of the Schematic, Design Development, and Construction Documents Phases, brief the Owner and the User Representative on the rationale for the selection of the major mechanical and electrical systems to be specified in the Contract Documents, together with their probable life-cycle costs.

ARTICLE 2 - BASIC SERVICES

2.1 GENERAL

The Design Professional shall furnish professional services with a Project described in this Agreement. The intent of this Agreement is to design a functional and operational facility within the identified project scope and cost limitation.

2.1.1 The Design Professional's Basic Services shall consist of the following as defined under the following Basic Services terms:

- A. Programming Phase
- B. Schematic Design Phase
- C. Design Development Phase
- D. Construction Documents Phase
- E. Bidding or Negotiation Phase
- F. Construction Phase
- G. Project Closeout and Final Warranty Inspection Phase

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

2.2 PROGRAMMING PHASE

2.2.1 The program shall establish goals, collect facts, identify concepts, analyze site, and determine functional needs necessary to complete the Project within the legislative mandate. Based on the data provided by the User Representative and pursuant to adequate consultation with the User Representative, the Design Professional shall prepare a report that adequately defines the scope of the Project. This document shall reflect the limits of the MACC and provide an estimated duration of Project Construction Schedule.

2.2.2 The Design Professional shall include in the program document the results of site investigation and the field verification of any information provided by the Owner and/or the User Representative.

2.2.3 The Owner and the User Representative shall work with the Design Professional to ensure that the information required by the Owner is made available to the Design Professional. This information and other requests concerning organization of functions shall be provided in the form of written memoranda.

2.2.4 The Owner shall schedule a meeting between the Design Professional and the User Representative to define the

relationship among all parties. The Design Professional shall advise the Owner, in writing, of any information he requires which has not been provided by the Owner and/or the User Representative, or any conflicts between the established program requirements, the MACC, Construction Project Schedule and the legislation authorizing the Project.

2.2.5 The Design Professional shall obtain the approval of the Owner, in writing, of the Program Phase before commencing work on the Schematic Design Phase. The Design Professional shall provide written confirmation, to be transmitted with the Program Document to the Owner, that the Design Professional has visited the site, familiarized himself with the local conditions under which the work is to be performed, correlated his observations with current code requirements and life safety needs, and has a clear understanding of existing conditions for the Project.

2.3 SCHEMATIC DESIGN PHASE

2.3.1 From the approved Program, the Design Professional shall produce a report that includes studies consisting of drawings and other documents necessary to illustrate the general planning concepts, probable architectural, engineering, and building systems, types of materials envisioned and preliminary alternatives, a breakdown of the budget on current area, volume, or other unit costs, and the approximate dimensions of the programmed areas. The number of iterations of such studies produced shall be sufficient to accomplish and demonstrate a design concept for the Project satisfactory to the Owner and the User Representative. The Design Professional shall incorporate in the Schematic Design drawings and documents energy sustainability considerations. The current State adopted Building Code and current ASHRAE 90.1 are incorporated into this Agreement by reference. Where applicable, the provisions of these documents shall apply. The Design Professional shall brief, and obtain the written approval of, the Owner of the Schematic Design drawings and documents. This review and approval will include the life-cycle-costs required by the Facilities Management Design requirements of this Agreement. The Design Professional shall obtain the written approval of the Owner of one of the proposed design schemes, as modified by any comment during review, before commencing work on the Design Development Phase.

2.3.2 The responsibility for bringing the Project within the MACC and compliance with construction directives remains with the Design Professional, as elaborated in the Construction Cost Responsibility Article of this Agreement. Should the Design Professional at any time conclude that the budget and the scope of the work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.4 DESIGN DEVELOPMENT PHASE

2.4.1 From the approved Schematic Design drawings and documents, the Design Professional shall prepare the Design Development Documents consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the entire Project as to civil, structural, mechanical, plumbing, and electrical systems materials and such other design essentials as may be appropriate. Additionally, these documents shall identify design features, program modifications, the probable Project Schedule, equipment installed in the Project or furnishings required, and a statement that identifies the need for any additional data, surveys, or tests. The Design Professional shall provide sufficient, alternative design solutions on major design features to allow the Owner and the User Representative to ascertain that the recommended design achieves a practical programmatic and economic solution, within the limitations of the authorized program, schedule, and budget. Include staffing and occupancy considerations provided by Owner and the User Agency(ies). The Design Professional shall acquire the approval, in writing, of the Owner of all documents associated with the Design Development Phase before commencing work on the Construction Documents Phase.

2.4.2 The Design Professional shall submit to the Owner for review and written approval a refined statement of Probable Construction Cost at the completion of the Design Development Phase. Should the Design Professional conclude, at any time, that the budget and the scope of the work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.4.3 Should the Owner initiate or require a material change from the approved Design Development Documents and there is no fault or responsibility of the Design Professional related to the Owner's initiation or requirement of the change, the Design Professional's effort implementing said change(s) shall be compensated as an Additional Service and the schedule for delivery of Design Professional's services shall be equitably adjusted under the terms of the Basis for Compensation Article of this Agreement.

2.5 CONSTRUCTION DOCUMENTS PHASE

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

2.5.2 Construction Documents shall include written and graphic elements indicating contracting requirements, specifications and contract drawings. If Contractor(s) is to provide professional design services, layouts of equipment or

certifications related to systems, materials or equipment that are not included in these Construction Documents, the Design Professional shall clearly define and identify such services and specify all performance and design criteria that such services must satisfy within the Construction Documents. The Owner or the Contractor shall not be responsible for the adequacy of the performance or design criteria specified by the Design Professional and required by the Construction Documents.

2.5.3 The Design Professional shall assist the Owner in the development of Construction Scope that can be utilized in the FMD Contract for Construction and provide a written Construction Scope recommendation.

2.5.4 In preparing the Construction Documents, the Design Professional shall, in consultation with the Owner, prepare the necessary bidding or proposal information, bidding or proposal forms, and the project manual, which shall include the Conditions and form of the FMD Contract for Construction (the Construction Agreement, the Construction Agreement General Conditions and the Construction Contract Supplementary Conditions), and be incorporated the Invitation to Bid or Request for Proposal documents the provision of Information Available to Bidders as provided as provided herein.

2.5.5 INVITATION TO BID (ITB): The ITB if required shall be prepared by the Design Professional as directed by Owner, and shall include the bid date, location and time, which shall be prepared by the Owner and Design Professional and submitted to the State Purchasing Division of the General Services Department during the Bidding Phase by the Owner. The Design Professional shall assist the Owner in filing the required documents for the approval of any governmental or other authorities having jurisdiction over the Project.

2.5.6 REQUEST FOR PROPOSAL (RFP): The RFP if required for Construction shall be prepared by the Design Professional as directed by the Owner, and shall include the RFP date, location and time, which shall be prepared by the Owner and Design Professional and submitted to the Director, Facilities Management Division of the General Services Department during the Construction Documents Phase by the Owner. The Design Professional shall assist the Owner in filing the required documents for the approval of any governmental or other authorities having jurisdiction over the Project assigned.

2.5.7 CONSTRUCTION DRAWINGS: In addition to the electronic CAD files, PDF files and related electronic documents, the Design Professional shall provide one full drawing set to the User Representative and one full drawing set to the Owner. Hand-drawn drawings, when approved in advance by the Owner, shall be prepared on non-glossy polyester film 3-mil thickness minimum. Standard Sheet sizes may be Architectural sizes 24" x 36" or 30" x 42".

2.5.8 ELECTRONIC DATA: The Owner requires that final Construction Documents and Specifications are prepared using computer technology in the formats prescribed the Software Requirements of this Agreement.

2.5.9 Only materials and systems available at the time of this Agreement or reasonably believed to become available prior to the expiration of the Construction Contract shall be specified in the Contract Documents. The Bidding Documents shall include a list of those items (or categories of items) for which shop drawings or submittals are required.

2.5.10 The Design Professional shall furnish Bidding Documents to the Owner bearing the approval of the following:

- A. Construction Industries Division, Regulation and Licensing Department;
- B. If applicable, Occupational Health and Safety Bureau, Environmental Protection Division, Environment Department;
- C. If applicable, the Health Facility Licensing and Certification Bureau, Health Improvement Division, Department of Health;
- D. If applicable, the New Mexico Environment Department;
- E. If applicable, the Energy, Minerals, and Natural Resources Department; and
- F. if applicable, Department of Information Technology (DoIT).

2.5.11 The Design Professional shall provide a signature/approval block on the front sheet of the drawings and specifications for:

- A. User Agency(ies),
- B. Facilities Management Division Project Manager, Staff Architect, and Director,
- C. Utility companies (as appropriate), and
- D. Design Professional Certification: Project meets as a minimum and current ASHRAE 90.1, requirements.

The Design Professional shall obtain review and signatures above listed entities.

2.5.12 Upon completion of the Construction Documents, the Design Professional shall brief the Owner and User Representative on the Bidding Documents, specifically addressing previous Owner concerns and requirements. At this briefing, the Design Professional shall furnish to the Owner a final and detailed statement of probable construction cost, including an updated Project Schedule. The Design Professional shall pay any fees incurred in the preparation of the detailed cost estimate

provided by the Design Professional.

2.5.13 The responsibility for bringing the Project within the MACC and compliance with construction directives remains with the Design Professional, as elaborated in this Agreement. Should the Design Professional at any time conclude that the budget and the scope of the work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile same.

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

2.5.15 The Design Professional shall acquire the approval, in writing, of the Owner of all documents, and any and all bid alternates, associated with the Construction Documents Phase before commencing work on the Bidding Phase.

2.6 BIDDING PHASE

2.6.1 The Design Professional, following the Owner's written approval of the ITB or RFP Documents, shall assist the Owner in obtaining bids or proposals and in awarding and preparing the Contracts for Construction. The finalized ITB or the RFP for Construction shall be prepared by the Owner and forwarded to the Design Professional for bidding purposes. The Owner shall issue a purchase requisition authorizing the State Purchasing Division to advertise for the Project.

2.6.2 The Design Professional shall provide sets of ITB or RFP Documents as required to the Owner, sets as required by the reviewing agencies, and sets as appropriate to all prime Bidders or Offerors requesting documents for bidding or proposal purposes. Prime Bidders or Offerors shall be defined as General Contractors, who will be allowed no more than three complete sets of Bid Documents.

2.6.3 The Design Professional shall provide additional sets ITB or RFP Documents to be placed in plan rooms as well as in the Design Professional's office for review by prospective Bidders or Offerors.

2.6.4 The Design Professional shall also make sets available to other prospective parties as requested. The Design Professional may charge the cost of reproduction to the party requesting the documents.

2.6.5 The Design Professional shall clarify and answer any questions about the Bid Documents during the bidding or proposal process and shall issue Addenda as required to all Bidders or Offerors, the State Purchasing Office, the Facilities Management Division, as applicable, the Owner, and the User Representative(s).

2.6.6 All addenda, including all revised drawings and sections, must be approved by the Owner prior to distribution. The Design Professional shall allow sufficient time for Owner review and acceptance of each addendum.

2.6.7 The Design Professional shall provide assistance to the Owner to identify the apparent successful Bidder and shall provide written recommendation to accept or reject the bids or proposal.

2.6.8 The Design Professional shall not discuss with bidders, offerors, news media, etc., any presumption of award until the award is decided by the Owner and Construction Contract is awarded.

2.7 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.7.1 The Construction Phase will commence with the award of the Contract for Construction and continues until the final request for Final Payment is submitted by the Contractor and approved by the Design Professional and Owner.

2.7.2 The Design Professional shall provide administration as defined in the Construction Contract and this Agreement. The extent of the Design Professional's duties and responsibilities and the limitations of his authority there under shall not be modified without the Owner's written consent.

2.7.3 The Design Professional shall be the representative of the Owner during the Construction Phase and shall advise and consult the Owner. Instructions to the Contractor shall be forwarded through the Design Professional. The Design Professional shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and the FMD Contract Construction Documents and any amendments thereto.

2.7.4 The Design Professional shall at all times have access to the Work, whether it is in preparation or progress.

2.7.5 The Design Professional shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contractor. The Design Professional shall make visits as specified in this Agreement and the FMD Construction Contract to the site at such other times as appropriate during the progress of the Work for the purposes of notifying the Owner on the progress and condition of the Work and adequately represent the Owner. Additionally, the Design Professional shall familiarize himself with the progress and quality of the Work and determine if the Work is proceeding substantially in accordance with the Contract Documents. On the basis of on-site observations, the Design Professional shall endeavor to guard the Owner against defects and deficiencies in the construction. Should the Design Professional determine that

any portion of the Work varies from the requirements of the Contract Documents, he shall immediately notify the Contractor and the Owner of the nature of the work required to correct such non-compliance.

2.7.6 The Design Professional shall provide a minimum of weekly on-site observations during the Construction Phase in an attempt to guard the Owner against defects and deficiencies in the construction, in addition to critical inspections and other reviews and evaluations required by the progress of the Work. The results of all on-site observations shall be documented in field reports submitted to the Owner within seven (7) days of each such site visit.

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

2.7.8 The Design Professional shall determine, certify, and make recommendations to the Owner for payment of the amounts owing to the Contractor subject to the Owner's approval, based on observations at the site and on evaluations of the Contractor's Applications for Payment. The Design Professional shall issue Certificates for Payment in such approved amounts as provided in the Contract Documents.

2.7.9 The issuance of a Certificate and recommendation for payment shall constitute representation by the Design Professional to the Owner, based on the Design Professional's observations at the site as provided herein and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that the quality of the Work is substantially in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Construction Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Design Professional has made any examination to ascertain how and for what purpose the Contractor has used the money paid on account of the Construction Contract Sum.

2.7.10 The Design Professional shall render interpretations of the documents necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions within a reasonable time on all claims, disputes, and other matters in questions between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

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

2.7.12 The Design Professional's decisions in matters relating to artistic effect shall be final if consistent with the requirements of the Construction Contract Documents.

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

2.7.14 The Design Professional shall review 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 Contract Documents; and, for each submittal, the Design Professional shall designate in writing that the Design Professional:

- A. Takes no exception to this submittal,
- B. Rejects the submittal,
- C. Requires corrections as noted by the Design Professional,
- D. Requires revisions and resubmitted to the Design Professional,
- E. Requires the Contractor to submit the specified item, or
- F. Approves as corrected.

Such action shall be taken with reasonable promptness so as to cause no delay. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.7.15 Necessary professional services or construction required to repair or overcome problems caused by the Design

Professional's errors, omissions, inadequacies, or changes not authorized by the Owner in the preparation of the documents or design shall be the responsibility of the Design Professional, without additional cost to the Owner.

2.7.16 All Change Orders, defined in the Conditions of the Contract for Construction, may be prepared by the Design Professional. Such Change Orders shall not become effective or binding on the Owner or Contractor until signed by the Owner and others whose signatures are required therein. Approval in writing by the Owner of a completed Change Order modifies this Contract for Construction to the extent indicated. No Work that could reasonably be expected to alter the contract price or materially alter the Project shall be undertaken until the Owner has approved a completed Change Order that outlines the desired change. Any deviation from the Change Order process described in the Construction Contract Documents shall be considered a material breach of this Contract. The Owner reserves the right to seek remedy from the Design Professional for Change Orders made necessary due to the Design Professional's errors and omissions.

2.7.17 Upon prior notice to the Owner, the Design Professional shall make observations in accordance with the Contract for construction to determine the Dates of Substantial Completion and Final Completion. The Design Professional shall review and make available to the Owner for the Owner's review, all documents required by the Construction Contract Documents and assembled by the Contractor. The Design Professional shall issue a final Certificate for Payment in accordance with the FMD Construction Contract.

2.7.18 The extent of the duties, responsibilities, and limitations of authority of the Design Professional as the Owner's representative during construction shall not be modified or extended without written consent of the Owner and the Design Professional.

2.7.19 Should the Design Professional, his staff, or his consultants direct the Contractor or his Subcontractors to undertake work for which additional compensation could reasonably be expected, and if such work is not:

- A. An emergency endangering life and property,
- B. Required by the Contract Documents, or
- C. Required by approved Change Orders (signed by the Design Professional, the Owner, and the Contractor), payment for such work, if accomplished without written authorization, shall not be borne by the Owner and shall constitute adequate grounds for dismissal or other action against the Design Professional.

2.7.20 As part of the Design Professional's Basic Services, the Design Professional shall modify the original reproducible drawings and the Project Manual, delineating recorded built conditions of the Project or record documents compiled from the records of the Contractor and the Design Professional, showing all known changes in the Work. This set of Documents shall also include record documents showing actual location of all Work.

2.7.21 RECORD DRAWINGS: Record drawings and documents are to be delivered to the Owner by the Design Professional within 30 days following Final Completion of the Project. Record Drawings shall be produced in accordance with the Software Requirements of this Agreement and shall consist of a set of reproducible drawings sheets, based on a Mylar format, specifications on 8 ½ X 11 in. paper and shall provide all the As-built conditions documented by the Contractor for the project. The Design Professional shall also make available to the Owner a set of PDF drawing files and CAD. Further, the Design Professional shall assure that all documents required by the Contract for Construction are made available to the Owner and User Agency(ies) in sufficient quantity as required.

2.8 PROJECT CLOSEOUT AND FINAL WARRANTY INSPECTION PHASE

2.8.1 The Design Professional shall obtain from the Contractor all Construction Contract Documents and make them available to the Owner.

2.8.2 The Design Professional shall attend one design process analysis meeting to assess implementation of sustainable design and construction requirements into the project and review any lessons learned from the overall effort.

2.8.3 FINAL WARRANTY INSPECTION(S) AND REPORT(S): The Design Professional shall, at intervals required by the FMD Construction Contract, schedule meeting(s) with the Owner, User Representative, and Design Professional's consultants to evaluate the building and its operations, inspect architectural systems, and endeavor to discover defects in materials, equipment, and workmanship and assure that all building and facility components have met their warranty requirement as specified in the FMD Construction Contract. The Design Professional shall provide a written report of this activity to the Owner and the Using Agency within seven (7) calendar days of any such meeting. The Owner, through the Design Professional, shall notify the Contractor of any corrective action noted in the report. The Design Professional shall confirm in a subsequent visit and/or inspection that the identified corrections have been successfully made.

ARTICLE 3 - ADDITIONAL SERVICES

3.1 ADDITIONAL SERVICES DEFINITION

3.1.1 Additional Services of the Design Professional are Services that are in addition to and not included in Basic Services, provided that the Design Professional is not obligated to perform, furnish or incur such services as a part of the Design Professional's Basic Services. These Additional Services may be identified as part of the Design Professional's fee proposal and included with the lump sum fee as such. Additional Services specifically identified in this Agreement are fully authorized upon execution of this Agreement. Any further Additional Services must be authorized in writing and supported by Amendment as required by this Agreement. Additional Services may include but are not limited to the following:

- A. Providing financial feasibility or other special studies.
- B. Providing planning surveys, site evaluations, environmental impact studies, or comparative studies of prospective sites other than those services required under Basic Services to provide a complete and operable facility.
- C. Providing services related to future facilities, systems, and equipment that are not intended to be constructed during the Construction Phase.
- D. Making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control or not the responsibility of the Design Professional. This does not apply to revisions necessary to complete the Basic Services. The Design Professional shall receive written authorization from the Owner before commencing work on any change or alteration to the Contract Documents.
- E. Preparing drawings, specifications, and supporting data and providing other services in connection with Change Orders, provided that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not for work which should have been provided pursuant to Basic Services and provided that such Change Orders are required because of causes not related to the actions or responsibilities of the Design Professional.
- F. Conducting investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities when such work is not covered by this Agreement.
- G. Providing 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.
- H. Providing tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- I. Providing all required work for design, selection, and preparation of contract documents, and bidding for the procurement of Movable Equipment (furniture, fixtures, and related equipment). Following installation of furniture, fixtures and equipment, Design Professional shall inspect the installation and prepare a list for items requiring correction. Upon notification from the installer that all corrections have been made, Design Professional shall again inspect the site to confirm that corrections were properly done and to authorize final payment for the furniture, fixtures and equipment.
- J. Additional Consultant services beyond basic services may be required for Projects with specialty systems or features required by the Project. The cost of such services is allowable as an Additional Service as determined by the Owner.

3.2 MOVEABLE EQUIPMENT (FIXTURES, FURNISHINGS AND EQUIPMENT)

3.2.1 As an Additional Service and if retained to do so, the Design Professional shall provide dimensional, color finish, power, etc., information necessary to specify any moveable furnishings and equipment not included Basic Services of the Project. Dimensioned furniture plans shall incorporate and coordinate the requirements for electrical, communications, and data based on use and equipment, as well as the location of HVAC control devices and access panels.

3.3 ADDITIONAL GEOTECHNICAL ENGINEERING

3.3.1 The Design Professional shall, during the Schematic Design Phase, submit to the Owner a statement of necessary geotechnical or soils engineering services that will be required beyond that identified in Basic Services. If the Design Professional does not believe the services of a Geotechnical Engineer are required for the project, a written notice of such shall be provided to the Owner stating same. Geotechnical engineering and any necessary surveys shall be as an Additional Service.

3.4 ADDITIONAL CIVIL ENGINEERING

3.4.1 The Design Professional shall, during the Schematic Design Phase, submit to the Owner a statement additional of civil engineering required for the Project to protect new and existing structures on or around the site from adverse conditions beyond those required by Basic Services. Extensive civil engineering, or civil engineering work outside of the immediate site proposed for the Project, shall be an Additional Service.

3.5 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.5.1 Design Professional's Project Representative: If the Owner and the Design Professional agree that more extensive representation for observation of the Site than that described in herein shall be provided, the Design Professional shall, upon written authorization of the Owner, provide one or more Project Representatives to assist the Design Professional in carrying out such responsibilities at the site.

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

3.5.3 Through the observations of such Project Representative(s), the Design Professional shall coordinate with the Project Representative(s) to continue protection for the Owner against defects and deficiencies in the Work to determine that the Work is carried out in conformance with the plans and specifications; but the furnishing of such project representation shall not diminish the rights, responsibilities, or obligations of the Design Professional as described in this Agreement.

3.5.4 The Owner reserves the right to designate an Owner Representative in lieu of a Design Professional's Project Representative to provide additional site representation for the Owner beyond that provided by the Design Professional. If the Owner elects to provide an Owner Representative in lieu of a Project Representative, this subsection shall not diminish the rights, responsibilities, or obligations of the Design Professional established in this Agreement. The Owner Representative's duties and limits of authority shall be established so as not to conflict with those of the Design Professional. The Design Professional shall cooperate with the Owner Representative in the performance of his duties.

3.5.5 The Owner reserves the right to employ an independent cost consultant to provide value and cost architectural or engineering services on the Project. If a cost consultant is retained, an amendment to this Agreement will be required identifying the duties and limits of authority of the cost consultant. The Design Professional shall cooperate with the cost consultant in the performance of the cost consultant's duties.

ARTICLE 4 - REIMBURSABLE EXPENSES

4.1 GENERAL

4.1.1 Reimbursable expenses are those in addition to Basic and Additional Services compensation and are the actual, incidental expenditures made by the Design Professional or his employees in the interest of the Project. **The Design Professional shall incur no expenses for which the Design Professional is entitled reimbursement until the Owner gives written approval.** Reimbursable expenses shall include but not be limited to the following:

- A. Expenses of transportation when traveling in connection with the Project when specifically required to provide Basic or Additional Services. Such expenses are limited to per diem and mileage rates as set forth in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8, NMSA 1978, and DFA Rule 95-1 as amended, except that the Owner shall authorize such travel in advance.
- B. Expense of fees paid for securing approvals of authorities having jurisdiction over the Project.
- C. The Design Professional shall charge Bidders or Offerors a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the Owner to solicit bids or proposals and execute the Construction Contract. This fee shall be completely refunded if the documents are returned in usable condition within the time limits specified in the Invitation to Bid or Request for Proposals. If the returned documents are not used for other purposes of this Agreement, the refunded portion of these fees shall become a Reimbursable Expense. All forfeited fees shall be returned to the Owner.
- D. Construction documents and specifications will be printed under the terms of a contract between the State Purchasing Division and the current Vendor on contract. **All reproduction required must be approved in writing by the Owner prior to request.** This expense shall be paid by the Owner for the initial Bidding and by the Design Professional for subsequent Biddings. All other reproductions as may be required for the Owner's review or for the office use of the Design Professional and the Design Professional's consultants shall be provided as part of the Design Professional's Basic Compensation.
- E. Applicable gross receipts taxes (GRT) on reimbursable expenses or Additional Services received by the Design Professional under the provisions of this Contract shall be paid by the Design Professional. The Design Professional shall use and require the use of Tax Exempt Certificates by Consultants and Suppliers whenever allowed by law. In any event, the Design Professional shall not include taxes paid as a part of the base dollar amount upon which taxes are

calculated.

- F. Any New Mexico Gross Receipts tax increases may be reimbursed through the reimbursables amount in the Contract. Or through an amendment to the Contract.
- G. Any of the Additional Services may also be identified in the reimbursables amount in the Contract, especially if the exact amount cannot be determined at the time of contract approval. Additional Geotechnical services, surveys or other informational gathering services would qualify to be entered as reimbursable services.
- H. Life Cycle Cost Analysis (LLCA). In some cases, the Contract needs to include proposed cost of an extensive LCCA services requested by Owner and exceeding those necessary to provide the basic probable life cycle costs.
- I. Construction Industries Division (CID) Plan Review Fee. This fee is required by CID when the Design Professional submits their 100% CD set to CID for review. This review has to be done in anticipation of the permit set being approved. Its cost will be a reimbursable expense determined later and estimated as part of reimbursable expenses. The General Contractor will pay CID for the approved permit set after the construction contract is awarded.

ARTICLE 5 - THE USER REPRESENTATIVE

5.1 GENERAL

5.1.1 The Owner shall designate one or more Agencies of the State of New Mexico or a designated entity as a User, or User Agency. Such User, or User Agency, shall provide an individual User Representative to perform those functions required of the User Agency.

5.1.2 The User Representative(s) and the Owner shall provide the Design Professional with information required under the provisions of this Agreement, as well as any additional information required by the Design Professional for the purpose of defining the Scope of the Project and to assist the Design Professional and the Owner in the development and completion of the Project.

5.1.3 The User Representative(s) shall meet with the Design Professional and/or the Owner at times required by the Owner. The User Representative(s) shall respond to all inquiries submitted by the Design Professional and/or the Owner within any time limits set forth in the inquiry.

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

ARTICLE 6 - OWNER'S RESPONSIBILITIES

6.1 GENERAL

6.1.1 The Owner may designate, in writing, a representative authorized to act in his behalf, however, authority for final approval of the Project Phase Documents, the Contract Documents, or any Change Order is retained by the Owner. The Owner shall examine documents submitted by the Design Professional and shall render decisions promptly to avoid unreasonable delay in the progress of the Design Professional's services.

6.1.2 The Owner may designate a Project Manager for the Project who shall be the Owner's primary representative in the administration of this Agreement. The Design Professional will report to the Owner's Project Manager. The Project Manager shall be the liaison between the Design Professional and the User Agency. All correspondence between the Design Professional and the User Agency shall be communicated to the Project Manager.

6.1.3 The Owner shall ensure review by, and obtain the concurrence of the User Representative, in writing, of each project phase and shall notify the Design Professional of the accord.

6.1.4 The Owner shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

6.1.5 The Owner reserves the right not to provide certain Project-related documents or drawings to the Design Professional at the Owner's discretion.

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

6.1.7 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as

necessary for the orderly progress of the Design Professional's services and of the Work.

ARTICLE 7 - CONSTRUCTION COST

7.1 RESPONSIBILITY FOR CONSTRUCTION COST

7.1.1 The responsibility for bringing the Project within the MACC and compliance with construction directives remains with the Design Professional.

7.1.2 If at any time as required by this Agreement, when the probable construction cost indicates that the Project exceeds the MACC, the provisions outlined in this Agreement shall apply.

- A. Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Design Professional represent the Design Professional's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Design Professional does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Design Professional.
- B. The MACC may only be adjusted based upon modifications to the Scope of Work approved in advance by the Owner. The Design Professional shall notify the Owner in writing at any time the estimated cost of construction is expected to exceed the MACC. The Design Professional's written notification shall include a detailed explanation and shall provide suggestions for reducing the estimated cost so that it does not exceed the MACC. The Owner agrees to cooperate with the Design Professional and permit reasonable and necessary revisions or reductions to the scope of the Project. The Design Professional agrees to revise the drawings and specifications as necessary at no additional expense to the Owner, if so requested by the Owner, in order to bring the estimated cost within the MACC.
- C. The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Design Professional shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding or Proposal Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the Design Professional may also include in the Bidding or Proposal Documents either additive or deductive alternate bids or proposals to adjust the Construction Cost to the fixed limit.
- D. If bidding or negotiations with potential contractors have not commenced within two months after the Design Professional submits Bidding or Proposal Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding or Proposal Documents to the Owner and the date on which proposals are sought.
- E. The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner may;
 - Give written approval of an increase in the MACC; or
 - Authorize re-bidding the Project within a reasonable time, and
 - Cooperate with the Design Professional in revising the Project scope and, as required, to reduce the Probable Construction Cost; and
- F. If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Design Professional in revising the quality and scope of the Project; and the Design Professional, without additional charge for services or re-printing of the Drawings and Specifications, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Design Professional shall then assist the Owner through the Bidding process.

ARTICLE 8 - PAYMENTS TO THE DESIGN PROFESSIONAL

8.1 PAYMENTS ON ACCOUNT OF PROFESSIONAL SERVICES PROVIDED

8.1.1 Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of services as set forth in this Agreement.

8.1.2 When portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project

shall be payable to the extent services are performed on such portions, based on the:

- A. The lowest bona fide bid or negotiated proposal, or
- B. If no such bid or proposal is received, the most recent Statement of Probable Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

8.2 PAY APPLICATION FOR SERVICES AND COSTS

8.2.1 The Design Professional shall submit a Pay Application in a manner as directed by the Owner. The Pay

Application format shall be consistent with the Project Work and shall be subject to approval by the Owner. The Owner may request modifications or additional information as required.

8.2.2 The Design Professional shall submit, with the Pay Application, an updated schedule as required by the TIME AND SCHEDULE Section of this Agreement. Failure to submit this updated Schedule shall prevent the pay application from being processed.

8.2.3 The Owner reserves the right to require the Design Professional to submit electronic pay requests.

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

8.3 PAYMENTS WITHHELD

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

8.3.2 In the event the Owner receives Notice from any person, Consultant, Sub consultant, or other third party, that the Design Professional has failed to pay such person(s) for Work performed in accordance with Agreements, the Design Professional shall, at the request of the Owner, and in no more than ten (10) calendar days, provide all documentation the Owner believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event the Owner determines the claim to be valid and payment is due, or in the absence of aforementioned documentation, the Owner may authorize direct payment of any unpaid bills, withholding from the Design Professional's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the Design Professional. In no event shall these provisions be construed to impose any obligations upon the state to the Design Professional.

8.4 PROJECT SUSPENSION OR TERMINATION - OTHER PARTIES

8.4.1 In the event of termination or suspension of the Project due to the fault of parties other than the Design Professional, the Design Professional shall be compensated for services performed to termination date pursuant to the terms of this Agreement..

ARTICLE 9 - DESIGN PROFESSIONAL'S RECORDS AND AUDIT

9.1 GENERAL

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

9.1.2 Records of expenses shall be kept by the Design Professional and his consultants and shall be available to the Owner until all applicable Statutes of Limitations have run, and this provision shall survive and continue beyond the termination of other terms of this Agreement.

9.1.3 These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor and shall be maintained for inspection for a period of three (3) years. Billings may be audited both before and after payment; and payment by the Owner under this Agreement shall not foreclose the right of the state to recover excessive or illegal payments.

9.2 OWNERSHIP AND USE OF DOCUMENTS

9.2.1 Original construction document drawings, designs, specifications, notes, project manuals, and/or related documents and other work developed in the performance of this Agreement by the Design Professional shall become the sole property of the Owner whether the Project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. The Owner shall keep these documents on file. The Design Professional may maintain a complete reproducible set of any and all record documents developed under this Agreement.

9.2.2 All documents, including drawings and specifications prepared by the Design Professional pursuant to this Agreement are instruments of service in respect to the Project. The Design Professional shall not be liable should the Owner use the documents, in whole or in part, in the future when the Design Professional's services are not retained.

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

9.2.4 Copyright: No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Design Professional.

ARTICLE 10 - TERMINATION OF AGREEMENT

10.1 GENERAL

10.1.1 If either party should fail to fulfill in a timely and appropriate manner his obligations under this Agreement, or if either party should violate any of the covenants, agreements, or stipulations of this Agreement, the non-breaching party, in addition to remedies available under the terms of this Agreement, shall thereupon have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. The Design Professional shall be responsible for all consequential costs that may arise out of the Design Professional's failure to complete the services in accordance with the schedule required by this Agreement.

10.1.2 In the event that the Project is abandoned by the Owner, the Owner may terminate this Agreement at any time by giving at least seven (7) days' notice in writing to the Design Professional.

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

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

ARTICLE 11 - GENERAL AND SPECIAL PROVISIONS

11.1 GOVERNING LAW

11.1.1 This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico pursuant to NMSA 1978 §38-3-1. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

11.2 LIABILITY AND CLAIMS

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

11.2.2 The Owner and the Design Professional waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages covered and paid by any property insurance during construction as set forth in the Conditions of the FMD Contract for Construction, as provided by any the provisions of this Agreement. The Owner and the Design Professional each shall require appropriate similar waivers from their contractors, consultants, and agents.

11.3 INDEMNIFICATION

11.3.1 The Design Professional shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Design Professional, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Design Professional or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Design

Professional or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Design Professional, the Design Professional shall as soon as practicable but no later than five (5) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

11.4 EFFECTIVE AGREEMENT

11.4.1 This Agreement shall not become effective until:

- A. Approved by the State Contracts Officer, Contracts State Bureau (CRB) of State Purchase Division, for compliance with the financial requirements of the legislation or funding source authorizing the Project and compliance with the requirements of all other legislation pertaining to the expenditures of public funds (if over \$250, or if the original amount combined with this or any other amendment is \$250 or more); and
- B. Signed by all parties required to sign this Agreement.

11.5 CONFLICT OF INTEREST, GOVERNMENTAL CONDUCT ACT

11.5.1 The Design Professional affirms that he currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Design Professional further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Design Professional. The Design Professional also agrees that neither he nor anyone employed by him shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, or supplier, except when the Project is a design-build project and/or the Owner provides inspections independent of the Design Professional. Design Professional certifies that Design Professional is in compliance with the Governmental Conduct Act pursuant to NMSA 1978 §10-16-1 through §10-16-18 regarding contracting with a public officer or current or former state employee. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- A. In accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;
- B. This Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
- C. In accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;
- D. This Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
- E. In accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- F. In accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

11.6 PENALTIES FOR VIOLATIONS OF LAWS

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

penalties for its violation.

11.7 CODE COMPLIANCE

11.7.1 The Design Professional's design shall be in compliance with Federal, State, and local codes and laws applicable to the Work, including but not limited to provisions of the Civil Rights Act of 1964 and Executive Order 11246, Title VI, Sections 3 and 109; the minimum handicapped accessibility as required by Section 60-13-44D, NMSA 1978; Section 306, New Mexico Building Code, which adopts ANSI A117.1, 2003; and parking requirements as required by Section 15-3-19, NMSA 1978. In all cases, the more restrictive code or statute adopted by the Construction Industries Division of the Regulation and Licensing Department shall govern.

11.8 EQUAL OPPORTUNITY COMPLIANCE

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

11.9 INSURANCE

11.9.1 PROFESSIONAL LIABILITY - The Design Professional shall obtain Professional Liability insurance and provide a Certificate of Coverage. Such insurance coverage shall be maintained in full force and effect at all times during the performance of Project services and for a period thereafter of not less than three (3) years following Substantial Completion of the Work. Insurance coverage shall not be cancelled or materially modified without forty-five (45) days' notice to the Owner. Said coverage shall be written by an insurer licensed to do business in the State of New Mexico and acceptable to the Owner. Proof of compliance with this section shall be provided by the Design Professional's insurer to the Owner in each year insurance is required. Fees for such insurance shall be at the Design Professional's expense and shall have a limit of no less than \$1,000,000 per occurrence and in the aggregate, unless as otherwise provided in Other Conditions or Services.

11.9.2 COMPREHENSIVE GENERAL LIABILITY - The Design Professional shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for all operations performed for the Owner by the Design Professional.

11.9.3 DESIGN PROFESSIONAL'S CONSULTANTS - The Design Professional shall require that liability insurance is maintained in accordance with the requirements of this Agreement. The Design Professional may either insure the activities of its Consultants or require them to maintain insurance to cover all claims.

11.9.4 POSSIBLE FUTURE INCREASE IN LIMIT AMOUNTS - If, during the term of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978, the Owner may require the Design Professional to increase the maximum limits of any insurance required herein.

11.9.4 WORKER'S COMPENSATION - The Design Professional agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If the Design Professional fails to comply with the Worker's Compensation Act and application rules when required to do so, the contract may be cancelled effective immediately.

11.9.5 FAILURE TO MAINTAIN INSURANCE - If the Owner is damaged by the failure or neglect of the Design Professional to maintain insurance as described above, then the Design Professional shall be liable for all costs and damages properly attributable thereto.

11.10 INDEPENDENT CONTRACTOR.

11.10.1 The Design Professional and his agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the State of New Mexico. The Design Professional and his agents and employees shall not as a result of this Agreement accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the State of New Mexico.

11.10.2 The Design Professional agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the Design Professional has express written authority to do so, and then only within the strict limits of that authority.

11.11 CONSULTANT RELATIONS

11.11.1 In the event that the Design Professional subcontracts out any portion of his duties or responsibilities under this Agreement, or if the Design Professional hires consultants to assist him with his duties or responsibilities under this Agreement, the Design Professional shall require that all terms of this Agreement applicable to the consultant, subcontractor, or joint venturer shall be incorporated into any contract or agreement entered into with such consultant, subcontractor, or joint venturer.

11.12 AMENDMENT

11.12.1 This Agreement shall not be altered, changed, modified, or amended except by instrument in writing executed by the parties with all appropriate required signatures. No Design Professional may contract for an additional Project Representative to be on the Project, or enter into a joint venture to share the duties and responsibilities of the Design under this Agreement without the express written approval by Owner. Any such Agreement must outline the duties and responsibilities of the Design Professional and his representative, or joint venturer, or consultant; and a copy of such approved agreement shall be filed with the Owner. Such agreements shall be amendments to this Agreement.

11.13 ASSIGNMENT

11.13.1 The Design Professional shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the Owner.

11.14 RELEASE

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

11.15 OWNER'S APPROVAL

11.15.1 No work requiring the approval of the Owner shall be undertaken until the Owner's written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for immediate termination pursuant to the Termination Article of this Agreement.

11.16 CONFIDENTIALITY

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

11.17 LABOR-MANAGEMENT RELATIONS.

11.17.1 During the entire term of this Agreement, the Design Professional shall take good-faith steps necessary to further satisfactory labor-management relations to the end that the operations of the Design Professional and of the Owner shall not be affected by strikes, picketing, boycotts, or other labor activities.

11.18 CERTIFICATES AND DOCUMENTS INCORPORATED

11.18.1 All Contract Documents noted in this Agreement may be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

11.19 INVALID CLAUSE OR PROVISION

11.19.1 If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

11.20 MERGERS, DISSOLUTION, SUCCESSORS, AND ASSIGNS

11.20.1 . The Design Professional agrees that during the term hereof it will maintain its existing business structure, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be:

- A. Assumes, is capable of, and agrees in writing to perform all of the obligations of the Design
- B. Professional hereunder;

C. Qualifies to do business in the State of New Mexico, including providing a legal resident registered Design Professional of New Mexico as Project Design Professional; and

D. The Owner approves the firm or individual Design Professional, or new Design Professional, if any, who is to proceed.

The terms and provisions hereof shall extend to, be binding upon, and inure to the benefit of the successors and assigns of the respective parties hereto. The Owner shall have sole discretion to determine whether or not the Project Design Professional or the firm named as Design Professional in this Agreement shall continue to have all contract rights under this Agreement and continue to represent the Owner under this Agreement in all instances where the Project Design Professional ceases to be associated with the firm named in this Agreement.

11.21 EXHIBITS AND ATTACHMENTS INCORPORATED BY REFERENCE

11.21.1 All Exhibits or Attachments noted in this of this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its Terms and Conditions.

11.21.2 The following Exhibit is attached to and made a part of this Agreement as though set forth in full in this Agreement or Work Order as appropriate:

- Exhibit A- Work Order
- Exhibit B- Consultant List
- Exhibit C- Provider Pay Request

11.22 DESIGN PROFESSIONAL PERFORMANCE EVALUATION

11.22.1 The Design Professional and its Consultant(s) acknowledge that the Owner will evaluate their performance under and pursuant to this Agreement. The purpose of such evaluations includes, but is not limited to, determining whether or not the Design Professional and its Consultant(s) responsibly performed their contractual obligations and whether or not the best interests of the state were promoted thereby. The Owner will provide a copy of any such performance evaluations to the Design Professional upon request, as soon as practicable after completion of the evaluation. The Design Professional or its Consultant(s) may respond to results of their performance evaluations by submitting a written request for review with the FMD Project Manager to attempt to reach mutual understanding. Any such request must include the reasons for the request, and documentation necessary to substantiate their claims that the initial performance evaluations were inappropriate or otherwise in error. Concerns not settled are to be presented in writing to the FMD Staff Architect for review, who will notify the respondent(s) of the results of the review as soon as practicable. The Owner reserves the right to waive the results of performance evaluations if, in the opinion of the Owner, corrective action has been taken to remediate substandard performance, events beyond the control of the Design Professional or its Consultant(s) resulted in substandard performance, or the best interests of the state will be served.

11.23 AUTHORITY

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

11.24 CONTRACT DOCUMENTATION

11.24.1 The Owner may, at its sole discretion, require that the completion of any or all requirements of the Contract Documents be recorded and acknowledged on specific forms as specified by the Owner. However whether Owner utilized these specific forms, the Design Professional is not relieved of its duty to provide documentation required by this Agreement.

11.25 PROJECT MANAGEMENT COLLABORATION SOFTWARE

11.25.1 The Owner may, at its sole discretion, require the Design Professional to utilize the Autodesk Construction Cloud/ Build (Build) as the Project Management Collaboration Tool.

11.25.2 If utilized, the Owner will provide the Design Professional with Project subscriptions to Build in sufficient quantity to effectively use Build to manage the Project.

11.25.3 Build shall be used to manage functions such as:

- A. Sheets/ Drawings
- B. Files
- C. Issues
- D. Forms
- E. Photos
- F. RFIs

- G. Submittals
- H. Meetings
- I. Schedule
- J. Assets and/or
- K. Reports

11.26 NOTICES

11.26.1 All notices given, or which may be given, by either party to the other shall be in writing and shall be deemed to have been fully given when emailed to the email address for the other party shown in this Agreement or when deposited in the United States mail, postage prepaid. If the notice is a notice of termination of work, the notice by mail shall be given by certified mail, addressed to the appropriate address for the recipient party set forth herein. Nothing herein contained shall preclude the giving of any such written notice by personal service.

The email address or address to which notices shall be sent may be changed by written notice given in the manner specified in this subparagraph.

11.27 GENDER, SINGULAR/PLURAL

11.27.1 Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

11.28 CAPTIONS AND SECTION HEADINGS

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

11.29 DISTRIBUTION OF COPIES OF CONTRACT

11.29.1 Fully executed copies of this Agreement shall be provided to the Owner and the Contractor and to such other parties associated with the Project as requested by the Owner or Contractor.

11.30 DOCUMENTS PROVIDED BY DESIGN PROFESSIONAL

11.30.1 The Design Professional shall have any insurance company or insurance agency issuing any required insurance coverage relevant to the Project provide the Owner with an appropriate Certificate of Insurance.

11.31 SEVERABILITY

11.31.1 If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

11.32 WAIVER

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

11.33 INTERCHANGEABLE TERMS

11.33.1 For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

11.34 WORDS AND PHRASES

11.34.1 Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

11.35 RELATIONSHIP OF CONTRACT DOCUMENTS

11.35.1 The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

11.36 ENTIRE AGREEMENT

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

11.37 FMD CONSTRUCTION CONTRACT

11.37.1 A Construction Contract for this Project will not be finalized until the completion of the Basic Services Bidding or Negotiation Phase if include as part of the provided Basic Services. In order to review the anticipated requirements of the FMD Construction Contract, the Design Professional may request in writing a copy of the latest FMD Construction Contract template that will be used as a basis for the final Project Construction Contract.

ARTICLE 12 - BASIS OF COMPENSATION

12.1 GENERAL

12.1.1 For each project, the fee for Basic Services generally is calculated on a percentage of the MACC adjusted by building type and design complexity, and Scope of Services. The fee for the Project is prescribed in this Agreement. The MACC, for the purpose of calculating the fee for basic services, is not adjusted at the time of construction contract award.

12.1.2 If at any time the MACC and/or the percentage is changed by amendment to this Agreement, the basic services fee shall be adjusted as appropriate. No fee adjustment shall be made for phases already completed.

12.1.3 Payments for Additional Services or Reimbursable Costs shall be made monthly in proportion to Services performed. The compensation at the completion of Basic and Additional Services and Reimbursable Costs shall be as provided by this Agreement.

12.1.4 Amounts of any compensation increase shall be documented by Amendment to this Agreement.

12.1.5 Payments for any Services provided by Consultants shall be computed by applying a multiple not to exceed of 1.10 times the amounts billed to the Design Professional for such services. On request, The Design Professional shall provide to the Owner for approval Consultant billing detail to verify this condition.

ARTICLE 13 - NEW MEXICO EMPLOYEES HEALTH COVERAGE

13.1 GENERAL

13.1.1 If the Design Professional has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the this Agreement, Design Professional certifies, by signing this Agreement, to have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all Agreements between Design Professional and the State exceed \$250,000 dollars.

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

13.1.3 The Design Professional agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurennewmexico.state.nm.us/>.

ARTICLE 14 - EXHIBITS

14.1 EXHIBIT A – Work Order

14.2 EXHIBIT B – Consultant List

Attach complete list of Consultants for a specific project to include:

- Discipline
- Entity Name
- Contact Name
- Contact Title
- Contact Cell Phone
- Contact Email
- Entity Address
- Entity Phone Numbers

14.3 EXHIBIT C- Provider Pay Request

PART B PROFESSIONAL SERVICES AGREEMENT SIGNATURE PAGE

REVIEWED AS TO LEGAL FORM AND SUFFICIENCY

Signature: Alexis Johnson
Printed Name: Alexis Johnson
Title: Acting General Counsel and Deputy FMD Director-legal
Date: 4/19/2024

AGREED

Design Professional

Signature: GERALD BENJAMIN PAZ
Printed Name: GERALD BENJAMIN PAZ
Title: Chief Operations Officer
Date: 4/18/2024

NM Seal & Certificate #: 10521 Share ID #: 0000046178
NM Tax ID: 01-305771-00-5 Federal Tax ID: 85-0166212

User Agency

Signature: N/A
Printed Name: N/A
Title: N/A
Date: N/A

APPROVED**FMD Staff Architect**Signature: Martin KuzielPrinted Name: Martin KuzielTitle: Staff Architect GSDDate: 4/19/2024**FMD Director**Signature: Anna SilvaPrinted Name: Anna SilvaTitle: Deputy Cabinet SecretaryDate: 4/22/2024**General Services Division Chief Financial Officer**Signature: Silvia O. RodartePrinted Name: Silvia O. RodarteTitle: Chief Financial OfficerDate: 4/22/2024**General Services Division Cabinet Secretary**Signature: Robert DoucettePrinted Name: Robert DoucetteTitle: Cabinet SecretaryDate: 4/23/2024**Management and Contracts Review Bureau, State Purchasing Division**

Signature: _____

Printed Name: _____

Title: _____

Date: _____



EXHIBIT A **STATE OF NEW MEXICO**

**Facilities Management Division
Professional Services Agreement
Article 4 - WORK ORDER**

Work Order Title: _____
AiM Project No.: _____
Bldg. Number(s): _____

Design Professional Contract No.: _____ Work Order No.: _____
Contract Expiration Date: _____
Fund No.: _____ Initiation Date: _____

Design Professional: _____

ATTN: _____
Address: _____

Phone: _____
Email: _____

Contract Cost Ceiling:	_____
Previously Committed:	_____
<i>Cost for this Work Order:</i>	_____
Remaining Amount:	_____

The Initial Maximum Allowable Cost (MACC) if known, for this Project: _____

The Design Professional provide the following services in accordance with this Agreement:

PROJECT DESCRIPTION/ GOALS

Check if Included	Amount	% of Fee
PART B – ARTICLE 2 – BASIC SERVICES		
<input type="checkbox"/> 2.2 – Programming Phase	_____	_____
<input type="checkbox"/> 2.3 – Schematic Design Phase	_____	_____
<input type="checkbox"/> 2.4 – Design Development Phase	_____	_____
<input type="checkbox"/> 2.5 – Construction Documents Phase	_____	_____
<input type="checkbox"/> 2.6 – Bidding Phase	_____	_____
<input type="checkbox"/> 2.7 – Construction Phase	_____	_____
<input type="checkbox"/> 2.8 – Project Closeout & Warranty Inspection Phase	_____	_____
TOTAL BASIC SERVICES	_____	_____

PART B – ARTICLE 3 – ADDITIONAL SERVICES

<input type="checkbox"/> 3.2 – Furniture and Fixtures	_____	_____
<input type="checkbox"/> 3.3 – Additional Geotechnical Engineering	_____	_____
<input type="checkbox"/> Geotechnical Report	_____	_____
<input type="checkbox"/> 3.4 – Additional Civil Engineering	_____	_____
<input type="checkbox"/> Site Survey	_____	_____
3.1 – Other _____	_____	_____
TOTAL ADDITIONAL SERVICES _____		

PART B – ARTICLE 4 – REIMBURSABLE EXPENSES

TOTAL REIMBURSABLE EXPENSES _____

PART A – ARTICLE 1.3.3 – GOVERNING TERMS AND CONDITIONS

General Conditions shall govern over all sections of the Contract Documents to include any issued Work Orders unless expressly identified in this Section C of this Work Order as follows:

CLARIFICATIONS:

EXCEPTIONS:

ADDITIONAL TERMS OR CONDITIONS:

PART B – ARTICLE 1 – GENERAL CONDITIONS

1.2.1 TIME AND SCHEDULE - The Design Professional shall submit a Gantt chart schedule including an initial baseline, durations, start and end dated and percent complete, for the Owner's written approval and as a condition precedent to this Agreement or Work Order as appropriate. A schedule for the performance of the Design Professional's services shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause not within the control of the Design Professional, be exceeded by the Design Professional. The schedule shall be updated as required elsewhere in this Agreement or Work Order as appropriate.

PART B – ARTICLE 8 – PAYMENTS TO THE DESIGN PROFESSIONAL

8.2.1 PAY APPLICATION FOR SERVICES AND COSTS - The Design Professional shall submit a Pay Application in a manner as directed by the Owner. The Pay Application format shall be consistent with the Project Work and shall be subject to approval by the Owner. The Owner may request modifications or additional information as required.

PART B – ARTICLE 11 – GENERAL AND SPECIAL PROVISIONS

11.21.2 The following Exhibit is attached to and made a part of this Agreement as though set forth in full in this Agreement or Work Order as appropriate:

- Exhibit A – Work Order
- Exhibit B- Consultant List
- Exhibit C- Provider Pay Request

WORK ORDER SIGNATURES

DESIGN PROFESSIONAL:

Signature: _____
(Authorized Signature)

Printed Name : _____

Title: _____

Organization: _____

Date: _____

OWNER:

Signature: _____
(FMD Director or Designee)

Printed Name: _____

Title: _____

Organization: _____

Date: _____

EXHIBIT B - Consultant List (Common)

Enter Project Name
Enter RFP # or Work Order #/ On Call Contract #
Enter Design Professional Firm

[illegible]

If Specialty Consultant is not required for any named Specialty. Indicate "None Required" in the Form Name field. List any additional Specialty Consultants as required.

Attach Additional Consultants if Necessary

EXHIBIT C
PROVIDER PAY REQUEST
FACILITIES MANAGEMENT DIVISION/GENERAL SERVICES DEPARTMENT
P.O. BOX 6850 Santa Fe, New Mexico 87502-0110

Design Professional:		Invoice No.:	
Address:		Invoice Date:	
		Payment Application Number:	
AiM CP Number:		Funding Number:	
Project Manager:			
Project Name:			

Basic Services	Contract Sum	Percentage Completed	Completed to Date	Less Prev. Request	Current Request	Revision (FMD)
Programming	\$ -	0%	\$ -	\$ -	\$ -	-
Schematic Design	\$ -	0%	\$ -	\$ -	\$ -	-
Design Development	\$ -	0%	\$ -	\$ -	\$ -	-
Construction Documents	\$ -	0%	\$ -	\$ -	\$ -	-
Bidding/ Negotiation	\$ -	0%	\$ -	\$ -	\$ -	-
Construction	\$ -	0%	\$ -	\$ -	\$ -	-
Acceptance	\$ -	0%	\$ -	\$ -	\$ -	-
11 Month Inspection	\$ -	0%	\$ -	\$ -	\$ -	-
Subtotal	\$ -	#DIV/0!	\$ -	\$ -	\$ -	-
NMGRT @ 0.0000%	\$ -		\$ -	\$ -	\$ -	-
CONTRACT CHANGES						
Additional Services						
Furniture and Fixtures	\$ -	0%	\$ -	\$ -	\$ -	-
Additional Geotechnical Engineering	\$ -	0%	\$ -	\$ -	\$ -	-
GeoTechnical Report	\$ -					
Additional Civil Engineering	\$ -					
Site Survey	\$ -	0%	\$ -	\$ -	\$ -	-
Other Fees	\$ -	0%	\$ -	\$ -	\$ -	-
Subtotal	\$ -	0%	\$ -	\$ -	\$ -	-
REIMBURSABLE (If allowed by Article 13.4) with prior written FMD approval						
Reimbursable per Article 13.4	\$ -	#DIV/0!	\$ -	\$ -	\$ -	-
Others (Description)	\$ -	#DIV/0!	\$ -	\$ -	\$ -	-
Others (NMGRT increases)	\$ -	#DIV/0!	\$ -	\$ -	\$ -	-
Subtotal	\$ -	#DIV/0!	\$ -	\$ -	\$ -	-
TOTAL CONTRACT						
SUM TO DATE	\$ -	#DIV/0!	\$ -	\$ -	\$ -	-

TOTAL AMOUNT
DUE \$ -

CERTIFICATION:
I do hereby certify that the work described herein has been performed and that no previous payment for the Total Amount Due, as s
SIGNATURE: _____ DATE: _____

Chavez, Paul, GSD

From: Jerry Paz <jpaz@molzencorbin.com>
Sent: Wednesday, April 10, 2024 1:19 PM
To: Chavez, Paul, GSD
Cc: Robert Robeda
Subject: [EXTERNAL] RE: Agency cert. verification

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

This information is correct.

Jerry B. Paz, P.E., M.ASCE, ENV SP
Chief Operations Officer
Past ASCE Society Director - Region 6



MOLZENCORBIN

505 242 5700 Tel
575 644 3517 Cell

MolzenCorbin.com

From: Chavez, Paul, GSD <paul.chavez@gsd.nm.gov>
Sent: Wednesday, April 10, 2024 1:03 PM
To: Jerry Paz <jpaz@molzencorbin.com>
Subject: Agency cert. verification
Importance: High

Good afternoon,
Please verify this information is correct.

Thank you

**New Mexico General Services Department
State Purchasing Division**

AGENCY CERTIFICATION FORM

FMD General Services Department hereby certifies the following in regard to the attached
(Agency Name)

contractual agreement between the Agency and **Molzen Corbin & Associates Inc.**
(Name of contractor)

- 1) This contractor **IS/ IS NOT X** a former state employee. (See note below)
- 2) This contractor **IS/IS NOT X** a current state employee or a legislator or the family member of a
current state employee or legislator, or a business in which a current state employee or legislator or family member of the current state employee or legislator has an interest of greater than 20%
(See note below)

NOTE: Former employee requires a Former Employee Affidavit (found on CRB website), PERA letter if contractor retired from State of New Mexico and an AG's letter if contractor separated/retired within the last five years to the date of signed contract. No contract may be awarded to a current state employee or legislator, or to a family member of a current state employee or legislator, or to a business in which any of these persons has an interest greater than 20% unless such contract awarded pursuant to the Procurement Code, except such persons or businesses cannot be awarded a contract through a sole source or small purchase. (See Section 10-16-1 through 10-16-18 NMSA 1978 for further information.)

- 3) This Contractor is a (check one): FOR PROFIT VENDOR **X**
NOT FOR PROFIT VENDOR _____

Paul Chavez
Project Administrator
GSD/Facilities Management Division
2542 Cerrillos Rd. T-187
Cell: 505.469.8421
Office: 505.827.2141
Email: paul.chavez@gsd.nm.gov

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.*, NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code 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.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a

sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to 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 of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“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.

“Prospective contractor” means a person or business that 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 or business 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.

Note: A prospective contractor shall make **separate** disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:		Governor _____	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
0	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature: GERALD BENJAMIN PAZ

Date: 4/18/2024

Title/Position: Chief operations officer

--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: GERALD BENJAMIN PAZ

Date: 4/18/2024

Title/Position: Chief operations officer

[My Homepage](#)

[Add/Update Contracts](#)



Chavez, Paul, GSD

From: determination, spd, GSD
Sent: Tuesday, March 19, 2024 9:51 AM
To: Chavez, Paul, GSD
Subject: RE: Determination Needed

Paul:

The scope of work as written would be PROFESSIONAL SERVICES. Please note this determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. Therefore, the agency may conduct the procurement independently of the State Purchasing Division (SPD). Any resulting contract(s) and amendment(s) must be processed through the Contracts Review Bureau (CRB) of SPD. Both CRB and SPD reserve the right to change this determination if the contract scope of work differs from the scope of work submitted for the original determination or if a later attached scope of work should contain goods or general services.

- While this scope of work has been determined to be professional services, please check the Horizons website to determine whether the scope of work must be offered to Horizons for their right of first refusal.
- When processing this procurement, please ensure that the Contracts Review Bureau contract template (or the DoIT contract template if IT related) is used.
- When processing this procurement, please ensure that the Contracts Review Bureau contract numbering system is used.

Thank you for submitting this scope of work for my review and please let me know if you have any questions about how I arrived at this determination.

Sincerely,

Brian Fitzgerald
Attorney
State Purchasing Division
1100 St. Francis Drive, Rm. 2016
Santa Fe, New Mexico 87505

From: Chavez, Paul, GSD <paul.chavez@gsd.nm.gov>
Sent: Tuesday, March 19, 2024 9:19 AM
To: determination, spd, GSD <spd.determination@gsd.nm.gov>
Subject: Determination Needed

We are inquiring a determination of services.

SCOPE OF WORK

FMD seeks proposals for Architectural and Engineering and related consultant services from

qualified firms or individuals capable of providing Programming and Design Consultation, as needed. The successful firm(s) or individual(s) will work with FMD staff project managers, client agencies, their designated representatives, and construction managers in the area of Capital Improvements Program through on-call contracts.

The areas of expertise required to perform the professional services associated with this RFP include, but are not limited to, the following:

Architectural and Engineering:

Architectural and engineering service contracts to be awarded will include but not necessarily be limited to full basic design services of the following phases:

- Programming (including studies, building condition assessments, master planning, site investigation, prioritization scheduling and design phase programming);
- Schematic Design (preliminary alternative materials and systems recommendations, including life cycle maintenance briefing and feasibility of utilizing alternative energy sources);
- Design Development;
- Construction Documents;
- Bidding;
- Construction Administration;
- FF&E;
- Project Closeout; and
- 11 Month Warranty Inspection.

Construction administration will include a minimum of weekly project site meetings and inspection or as negotiated. Project closeout services will include one design process analysis meeting to assess implementation of sustainable design and construction requirements into the project and review any lessons learned from the overall effort.

In addition, as-needed services for basic and additional services may include, but are not limited to: deficiency investigations, LEED® consulting, Energy Star consulting, various alteration, remodel, retrofit, and new construction projects to improve facility infrastructure, buildings and building systems, design services for construction contracts, water and wastewater projects, site and drainage improvements, water distribution systems, hydrology reports, historic assessments, energy modeling, storm water management, environmental assessments, traffic studies, geological reports, and limited hourly services including, but not be limited to: cost estimates; cost and schedule analysis to include status of cost and schedule performance of projects; plan review to include review of construction drawings for maintainability and assess fitness with LEED and/or Energy Star objectives; feasibility studies; determining and drawing existing conditions; site investigations including geo-technical reports, topographical studies and hazardous materials studies; statutory and regulatory requirements support; data collection in support of FMD programs; general or specific specifications; project analysis and recommendations for validity of claims/ time extensions; conference/meeting support assistance; and design and production of visual media products in support of the FMD mission.

If appropriate, the design and construction of any identified project shall conform to energy efficiency standards. The work shall integrate building materials and methods that promote environmental quality, economic vitality, and social benefit through the construction and operation of the built environment. The intent of any project is to create a built environment that provides the highest level possible of operational efficiency, as well as comfort and support for the building tenants and visitors. The project also must meet the energy efficiency standards mandated for State owned facilities.

Implementation Procedures:

It is the intent of FMD to make multiple awards to qualified design professionals that span a wide range of disciplines, specialties, expertise, and geographic locations. Qualified firms or individuals will enter into single contracts for services on an as needed basis pursuant to Section 13-1-150 NMSA 1978. The proposed term of awarded contracts will not exceed (4) four years, and cannot exceed seven and a half million dollars (\$7,500,000) in fees over the term of the contract. Each

project fee may not exceed six hundred fifty thousand dollars (\$650,000). Larger projects may be contracted separately. A project may not be divided to meet the limits of this contract. During the term of the contract, each identified project will be presented to the successful Offeror (or Offerors) with a scope of work, schedule, and proposed fee as a "Work Order" (W/O). No work shall begin without a signed Work Order and approved Purchase Order. The State User Agency will provide program and operational support through all phases of any identified project. FMD will provide technical assistance and overall project management. FMD reserves the right to revise the scope of work or the MACC for any identified project, and adjust the fee accordingly. The successful Offeror(s) must agree that it may not be the sole successful Offeror providing Architectural Design or General Engineering and related services to FMD; and FMD at its sole discretion shall determine what work is assigned to the successful Offeror(s). The actual amount available for work orders under this RFP is unknown. However, it is anticipated that dozens of projects will be identified over the 4-year term of the contract, depending on such factors as available funding, program authorization, and volume of demand for service. Award of an On-Call Contract as a result of this RFP does not guarantee any work being ordered under the resultant contract. The work order fees on a specific project will be based upon the approved Architect/Engineer Rate Schedule as per New Mexico Administrative Code (NMAC) 1.5.18. Facilities Management Division will negotiate the fee determined to be fair and reasonable for the scope of work. Article 6 (Part B) of Agreement between Owner and Design Professional defines reimbursable expenses. Normal travel expenses in connection with the project should be included in basic services. Project specific reimbursables will be placed in Other Conditions or Services (Part A of the Agreement between Owner and Design Professional).

Thank You



Paul Chavez
Project Administrator
GSD/Facilities Management Division
2542 Cerrillos Rd. T-187
Cell: 505.469.8421
Office: 505.827.2141
Email: paul.chavez@gsd.nm.gov

Chavez, Paul, GSD

From: Matt Loehman <mloehman@horizonsofnewmexico.org>
Sent: Tuesday, March 19, 2024 9:24 AM
To: Chavez, Paul, GSD
Subject: [EXTERNAL] Re: Determination Needed

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Good morning,

Thank you very much for the opportunity, but we will decline this procurement.

Best regards,

Matt

Matt Loehman
Executive Director

Horizons of New Mexico
6121 Indian School Rd. NE, Suite 102
Albuquerque, NM 87110

office phone: (505) 345-1540
email: mloehman@horizonsofnewmexico.org
web: www.horizonsofnewmexico.org

The State Use Act helps people with disabilities become gainfully employed, and it saves you valuable time and resources otherwise used during the procurement process.

On Tue, Mar 19, 2024 at 9:19 AM Chavez, Paul, GSD <paul.chavez@gsd.nm.gov> wrote:

We are inquiring a determination of services.

SCOPE OF WORK

FMD seeks proposals for Architectural and Engineering and related consultant services from

qualified firms or individuals capable of providing Programming and Design Consultation, as needed. The successful firm(s) or individual(s) will work with FMD staff project managers, client agencies, their designated representatives, and construction managers in the area of Capital Improvements Program through on-call contracts.

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- Design Development;
- Construction Documents;
- Bidding;
- Construction Administration;
- FF&E;
- Project Closeout; and
- 11 Month Warranty Inspection.

Construction administration will include a minimum of weekly project site meetings and inspection or as negotiated. Project closeout services will include one design process analysis meeting to assess implementation of sustainable design and construction requirements into the project and review any lessons learned from the overall effort.

In addition, as-needed services for basic and additional services may include, but are not limited to: deficiency investigations, LEED® consulting, Energy Star consulting, various alteration, remodel,

retrofit, and new construction projects to improve facility infrastructure, buildings and building systems, design services for construction contracts, water and wastewater projects, site and drainage improvements, water distribution systems, hydrology reports, historic assessments, energy modeling, storm water management, environmental assessments, traffic studies, geological reports, and limited hourly services including, but not be limited to: cost estimates; cost and schedule analysis to include status of cost and schedule performance of projects; plan review to include review of construction drawings for maintainability and assess fitness with LEED and/or Energy Star objectives; feasibility studies; determining and drawing existing conditions; site investigations including geo-technical reports, topographical studies and hazardous materials studies; statutory and regulatory requirements support; data collection in support of FMD programs; general or specific specifications; project analysis and recommendations for validity of claims/ time extensions; conference/meeting support assistance; and design and production of visual media products in support of the FMD mission.

If appropriate, the design and construction of any identified project shall conform to energy efficiency standards. The work shall integrate building materials and methods that promote environmental quality, economic vitality, and social benefit through the construction and operation of the built environment. The intent of any project is to create a built environment that provides the highest level possible of operational efficiency, as well as comfort and support for the building tenants and visitors. The project also must meet the energy efficiency standards mandated for State owned facilities.

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It is the intent of FMD to make multiple awards to qualified design professionals that span a wide range of disciplines, specialties, expertise, and geographic locations. Qualified firms or individuals will enter into single contracts for services on an as needed basis pursuant to Section 13-1-150 NMSA 1978. The proposed term of awarded contracts will not exceed (4) four years, and cannot exceed seven and a half million dollars (\$7,500,000) in fees over the term of the contract. Each

project fee may not exceed six hundred fifty thousand dollars (\$650,000). Larger projects may be contracted separately. A project may not be divided to meet the limits of this contract.

During the term of the contract, each identified project will be presented to the successful Offeror (or Offerors) with a scope of work, schedule, and proposed fee as a “Work Order” (W/O). No work shall begin without a signed Work Order and approved Purchase Order. The State User Agency will provide program and operational support through all phases of any identified project. FMD will provide technical assistance and overall project management. FMD reserves the right to revise the scope of work or the MACC for any identified project, and adjust the fee accordingly.

The successful Offeror(s) must agree that it may not be the sole successful Offeror providing Architectural Design or General Engineering and related services to FMD; and FMD at its sole discretion shall determine what work is assigned to the successful Offeror(s).

The actual amount available for work orders under this RFP is unknown. However, it is anticipated that dozens of projects will be identified over the 4-year term of the contract, depending on such factors as available funding, program authorization, and volume of demand for service. Award of an On-Call Contract as a result of this RFP does not guarantee any work being ordered under the resultant contract.

The work order fees on a specific project will be based upon the approved Architect/Engineer Rate Schedule as per New Mexico Administrative Code (NMAC) 1.5.18. Facilities Management Division will negotiate the fee determined to be fair and reasonable for the scope of work. Article 6 (Part B) of Agreement between Owner and Design Professional defines reimbursable expenses. Normal travel expenses in connection with the project should be included in basic services. Project specific reimbursables will be placed in Other Conditions or Services (Part A of the Agreement between Owner and Design Professional).

Thank You



Paul Chavez

Project Administrator

GSD/Facilities Management Division

2542 Cerrillos Rd. T-187

Cell: 505.469.8421

Office: 505.827.2141

Email: paul.chavez@gsd.nm.gov



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/14/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Professional Liability Insurers, Inc. Higginbotham Insurance Agency, Inc. 6101 Moon Street NE Ste 1000 Albuquerque NM 87111	CONTACT NAME: Eloise Hughes PHONE (A/C, No, Ext): 505-822-8114 E-MAIL ADDRESS: ehughes@higginbotham.net FAX (A/C, No): 505-822-0341														
License#: 2081754 MOLZ&AS-01	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : Donegal Mutual Insurance Company</td><td>13692</td></tr><tr><td>INSURER B : Atlantic States Insurance Company</td><td>22586</td></tr><tr><td>INSURER C : New Mexico Premier Insurance Company</td><td>13675</td></tr><tr><td>INSURER D : XL Specialty Insurance Co.</td><td>37885</td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Donegal Mutual Insurance Company	13692	INSURER B : Atlantic States Insurance Company	22586	INSURER C : New Mexico Premier Insurance Company	13675	INSURER D : XL Specialty Insurance Co.	37885	INSURER E :		INSURER F :	
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INSURED Molzen-Corbin & Associates Inc 2701 Miles Road SE Albuquerque NM 87106															

COVERAGES**CERTIFICATE NUMBER:** 1245281794**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		1000111468	12/31/2024	12/31/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		1000111478	12/31/2024	12/31/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		1000111472	12/31/2024	12/31/2025	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/> N / A		64411.117	1/1/2025	1/1/2026	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability		DPR5037963	12/31/2024	12/31/2025	Each Claim Aggregate 2,000,000 6,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Aviation/Drone Liability, American Alternative Insurance Corporation, #9048809, Effective/Expiration Dates: 10/24/2024 - 10/24/2025, Liability Limit \$1,000,000.

RE: FORT MARCY PARK IMPROVEMENTS 2025 UNDER STATE OF NEW MEXICO GENERAL SERVICES DEPARTMENT, FACILITIES MANAGEMENT DIVISION "ON CALL" CONTRACT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND DESIGN PROFESSIONAL ON CALL CONTRACT # 24-350-0090-00048.

CERTIFICATE HOLDER**CANCELLATION**City of Santa Fe
PO Box 909
Santa Fe NM 87504

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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APPROVED SERVICES

The service categories below have been approved by the New Mexico Council for Purchasing from Persons with Disabilities and are available through Horizons of New Mexico.

If you do not see a service listed below that you are interested in providing, please contact Horizons of New Mexico to discuss its possible addition.

+ ADA Accessibility Consulting Services

+ Auctioneering Services

+ Bulk Printing and Mailing

+ Botanical Services

+ Call Center Services

+ Clerical Data Entry

EXCLUDED SERVICES

The service categories below have been deemed unsuitable under the State Use Act by the New Mexico Council for Purchasing from Persons with Disabilities.

Architects

Individuals who design buildings and, in many cases, also supervise their construction.

+ Employment Support Services

+ Landscape Architects

+ Remediation – Wall Repair

+ Lawyer Services

+ Survey Services

+ Surveyors



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

www.santafenm.gov

Alan Webber, Mayor

Councilors:

Signe I. Lindell, Mayor Pro Tem, District 1

Alma G. Castro, District 1

Michael J. Garcia, District 2

Carol Romero-Wirth, District 2

Lee Garcia, District 3

Pilar F.H. Faulkner, District 3

Jamie Cassutt, District 4

Amanda Chavez, District 4

Dear City Staff,

In accordance with State Statute and City Ordinances, this document serves as a blanket services' determination and is valid until June 30, 2025, for the types of general, professional, and construction services that are clearly one of the types pre-established and approved by the State Purchasing Agent and City CPO.

Please continue to obtain determinations for services that do not clearly and fully fit within the types listed below. For mixed or hybrid services, unclear scopes of work, and design-build projects, a specific determination will be required. In these cases, please email purchasing_det@santafenm.gov to obtain the necessary CPO determinations for your procurement needs.

Should you have any questions or require clarification on a particular service, feel free to contact CPD.

The following are General Services:

- Air/bus, vehicle charter/rental service
- Auctioneers
- Audio-visual equipment setup and routine maintenance for events and presentations (including projectors, microphones, and speakers)
- Banking Services (routine, transaction-based)
- Boiler testing/water treatment service
- Bookkeeping service (routine, transaction-based)
- Building alarm systems, service and repair
- Check collection service
- Clothing, textile fabrication repair service
- Commercial laundry service, dry cleaning, etc.
- Communications systems installation, servicing, and repair
- Conference and trade show coordination

General Services (continued):

- Debt collection service
- Delivery/courier service
- Document storage, duplication, retrieval, review, and destruction service
- Drug testing and screening (standard tests)
- Engraving service
- Equipment installation, preventive maintenance, inspection, calibration, and repair
- Equipment rental services
- Exams administration and scoring service
- Executive recruitment
- Firefighting/suppression service
- Food preparation, vending, and catering services
- Health screening, basic diagnostic (wellness, blood pressure monitoring, blood draw, etc.)
- Herbicide application service
- Household goods packing, storage, transportation service
- HVAC system maintenance service
- Information Technology Hosting (only)
- Information Technology Help Desk Services
- Information Technology Services requiring software or equipment
- Information Technology Software and Hardware Support Services
- Interpretive services: written/oral/sign language
- Inventory service
- Janitorial service, carpet cleaning, window washing
- Laboratory testing and analysis (standard tests only)
- Land clearing/debris removal service
- Landscaping—tree planting, grooming service, lawn mowing, etc. (but not landscape architects)
- Language translation service
- Linen rental service
- Marine equipment inspection, certification, and repair

General Services (continued):

- Medical equipment rental or repair service (wheelchairs, walkers, etc.), including measurements, adjustments, and modifications to meet patient needs
- Metal/pipe/wiring detection service
- Office furnishings installation, refurbishment, and repair service
- Package inspection and crating
- Painting service
- Paper shredding
- Parking lot sweeping/snow removal service
- Pest/weed control service
- Photographic/micrographic processing and delivery, includes aerial and ground photography (if analysis is included, then personal service)
- Printing/duplicating service
- Process serving
- Property management (rent collection, property maintenance, etc.)
- Recycling/disposal/litter pickup service
- Retreat and workshop planning, conduct, coordination, etc.
- Security/armored car services
- Shop welding/metal fabrication service
- Software as a Service
- Steam cleaning, high pressure washing, parts cleaning service
- Studio photography service (does not include portrait painting)
- Telephone interview service (conduct of survey using prescribed survey instrument)
- Towing service
- Training – when offered as a regular course by an institution (such as a college or university)
- Travel service — air, surface, water
- Vehicle inspection, lubricating, and repair services
- Videotaping and recording service
- Warehouse dry/cold storage rental service
- Weather information service

The following are Professional Services:

- Accountants (certified public accountants and registered public accountants)
- Actuaries
- Analysts of processes, programs, fiscal impact, and compliance
- Appraisers
- Archeologists
- Architects
- Artwork, original (services creating the artwork)
- Audio/video media productions (design, development, and/or oversight of)
- Auditors
- Broadband
- Business process re-engineering
- Counselors
- Consultants (including IT Consultants)
- Curriculum/Examination development
- Data Backup Services
- Data Storage and Management Services
- Design
- Economists
- Engineers
- Environmental monitoring: noise level, safety, hazardous gas detection, radiation monitoring service, etc.
- Financial Advisors
- Grant writing
- Graphic designers (creative or original in nature)
- Independent Verification and Validation
- Information Technology Hosting when it includes Maintenance and Support
- Information Technology Maintenance
- Information Technology Management

Professional Services (Continued):

- Information Technology Programming
- Information Technology Risk Assessment
- Insurance Adjusters
- Investigators (personnel-related, etc.)
- Investment advisors and management
- Labor negotiators
- Landscape Architects
- Lawyers
- Lobbyists
- Managed Network Services
- Management and system analysts
- Management consultants
- Marketing consultants (including identifying market opportunities, conduct of marketing programs, planning, promotion, market research surveys, etc.)
- Medical arts practitioners
- Network Cybersecurity Services
- Network Installation
- Planners
- Policy Advisors
- Product Development Services
- Program/Project Managers
- Psychologists
- Public relations advisors/Publicists
- Publication development (creation of audio/video productions, brochures, pamphlets, maps, signs, posters, annual reports, etc.)
- Researchers
- Scientists (Bio/Chem/Env/Geo/Hydro/Mech, etc.)
- Speech writers
- Statisticians

Professional Services (Continued):

- Surveyors
- Trade developers
- Training – when it is specifically designed for an agency as opposed to established courses (such as out of the box training offered to all at a training company, university, or college)
- Web design and development

The following are Construction Services:

- Bid-Build (Standard)
- Construction Managers
- New Construction (including buildings, roads, bridges, utilities)
- Remodeling and Renovations (interior and exterior work)
- Demolition (including site clearance)
- Excavation and Earthwork
- Electrical Work (installation, repair, upgrades)
- Permanent installation or upgrades of audio-visual systems (including wiring and structural modifications)
- Plumbing (installation, repair, maintenance)
- Masonry and Concrete Work
- Roofing (installation, repair, maintenance)
- Structural Repair and Reinforcement
- Painting and Finishing (for construction purposes)
- Mechanical Work (HVAC systems, etc.)
- Site Preparation and Land Grading
- Utility Installation and Repair (water, sewer, gas lines)

Travis Dutton-Leyda, Chief Procurement Officer



Date: 11/21/2024

Emily Oster, Finance Director



Date: 11/26/2024

Signature: 

Email: xivigil@santafenm.gov