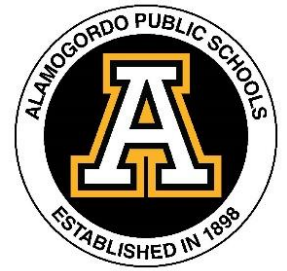


Alamogordo Public Schools
PO Box 650
Alamogordo, NM 88311-0650



Office of Business and Finance
Marie Bouma, Chief Procurement Officer
1211 Hawaii Avenue
Alamogordo, NM 88310

Office: (575) 812-6044
Fax: (575) 812-6049

MEMORANDUM

To: Acting Superintendent – Pam Renteria

Via: Deputy Superintendent – Colleen Tagle

From: Chief Procurement Officer, Marie Bouma

Date: April 19, 2023

Re: Executive Summary of Contract

ESA is the only locally owned, operated, and staffed company that provides a wide scale of services to include Fire Alarm installations, repairs, service, inspections, and 24/7 monitoring by an FM approved central station. ESA was first awarded this contract for the 20/21 school year resulting from RFP 011-2021-District Fire Alarm Systems this is the fourth year of the contract. This contract is budgeted out of Safety and Security and is not to exceed \$65,000. The Department Head of this contract is Doyle Syling and is overseen by the Duty Superintendent of Operations.

APS will utilize ESA for maintenance and necessary services for the Fire Alarms throughout the district.

Respectfully,

Marie Bouma

Marie Bouma
Chief Procurement Officer
Alamogordo Public Schools



**ALAMOGORDO PUBLIC SCHOOLS
PROFESSIONAL SERVICES CONTRACT NO. 011-2021-C4**

THIS PROFESSIONAL SERVICES CONTRACT (the “Contract”) is made and entered into this **April 19, 2023** (“Effective Date”) by and between the Alamogordo Public Schools (“District”), a New Mexico public school district, whose address is 1211 Hawaii Ave, Alamogordo, New Mexico, and **Executive Security Associates, LLC** with its principal place of business at **918 Texas Ave, Alamogordo, NM,** (herein referred to individually as “Party” or collectively as “Parties”).

WHEREAS, the District requires certain **District-Wide Fire Alarm Systems Services** as set forth in its Request for Proposals No. **011-2021**;

WHEREAS, Contractor submitted a proposal to provide such **District-Wide Fire Alarm Systems Services** and Contractor represents that it has the experience, licenses, qualifications, staff and expertise to perform said services in a professional and competent manner;

NOW, THEREFORE, it is mutually agreed by the District and Contractor that for the considerations set forth herein, Contractor shall provide said services to the District as set forth below and in RFP No. **011-2021**.

Term

The Term of this Contract commences on **July 01, 2023** and ends on **June 30, 2024**. This is the fourth year of the contract, with the District’s option to renew annually, not exceed four years, including all extensions and renewals. Each renewal option is (1) contingent on the availability of future appropriations and (2) to be exercised only by affirmative action on the part of the District. There will be no automatic renewal of the contract. The option to renew is within the sole discretion of the District. This is the fourth year of the agreement.

Incorporation

The Parties agree that this Contract is in reference to and incorporates the Alamogordo Public School’s Request for Proposals No. **011-2021** and all documents included therein and attachments and appendices thereto, and Contractor’s responsive proposal and all documents included therein and attachments thereto.

Contract Documents

The Contract Documents shall include this Contract and all attachments and appendices thereto, the Alamogordo Public School’s Request for Proposals No. **011-2021** and all documents included therein and attachments and appendices thereto, and Contractor’s responsive proposal and all documents included therein and attachments thereto. In the event of any discrepancy among the documents, this Contract shall prevail.

The documents included in the contract are intended to be complementary and to describe a complete work. If the District determines a conflict exists between the contract documents, District

shall decide which document will be applied and the Contractor shall then complete the work according to the interpretation made by the District.

Scope of Work

Contractor will supply preventative and on-going maintenance, programming, annual testing and related services to support the fire alarm systems.

The school district has 19 facilities as outlined below: See **Table 1 School Building Summary**.

- Two (2) High Schools
- Three (3) Middle Schools
- Ten (10) Elementary Schools
- One (1) Administrative Complex
- One (1) Shared Central Receiving/Maintenance Facility

III. SPECIFICATIONS

A. Monitoring: Contractor will be responsible for monitoring and alarm dispatching of the existing fire alarm control panels/communicators.

Monitoring Requirements:

- i. Provide 24 hour per day, 7 days per week, 12 months per year monitoring on fire alarms transmitted to the central station and provide appropriate dispatch response to the alarm.
- ii. In general, alarm monitoring firm will dispatch to the appropriate 9-1-1 or emergency dispatch center immediately on receipt of the alarm.
- iii. Provide dispatching special instructions as required.
- iv. When contacted by the individual facility regarding a planned Fire Drill, adjust the monitoring system appropriately.

B. Inventory: Within three months of award of the contract, provide a review of each facility and catalog, in a form and format acceptable to the District, the fire alarm components with appropriate identifying information including but not limited to control panel/communicator, fire sensors, smoke detectors, and audible devices, in a format acceptable to the District. Provide an electronic copy of the catalog to the District and maintain the catalog current throughout the life of the contract. The catalog will be the sole property of the District and all copies of the catalog shall be provided to the District upon written demand. Provide recommendations for upgrades to equipment and/or systems where appropriate.

C. Maintenance and Testing: Respond to on-call maintenance requests of the fire alarm system components. This work may include, but not be limited to, updating existing fire alarm control panel/communicator, fire sensors, smoke detectors, and audible devices, as directed by the District. The annual required testing of the fire alarm panels and equipment shall be in accordance with National Fire Protection Act (NFPA) test methods and International Building Code (IBC). The on-call maintenance work will be done on a time and material basis with the issuance of an authorization by the District.

D. Response time: The Contractor shall maintain the fire alarm systems in a constant state of operational readiness at no additional cost to the district (except for user abuse and vandalism). The

Contractor shall be able to physically respond to repair/trouble calls within two (2) hours to make repairs.

- E. Additional Repairs:** The Contractor shall replace any component of the system, which requires repeated repairs. All software and firmware shall be maintained in the same manner. The Contractor agrees to provide full maintenance (parts and labor) on the entire security system at all locations for the entire period of the contract. This covers defective materials and workmanship, normal wear and tear, lightening and storm damage, etc. Software, firmware flash revisions will be provided for all installed equipment as released by the manufacturer without additional cost.
- F. Extended repairs:** In the event the Contractor is unable to repair any alarm panel within a reasonable length of time, the district will be held responsible for monitoring the building. The district may contact another firm to repair the problem and charge the full repair to the Contractor.
- G. Repair Rates Beyond:** Contractor will state repair rates for all work performed beyond full maintenance, for the period of the contract. Any damage as a result of district abuse or vandalism will be the responsibility of the district.
- H. New Facilities / Facility Expansion:** When the District constructs new facilities or expands or re-configures existing facilities, the fire alarm system work will be included within the General Contractor’s scope of work. The contractor awarded the **DISTRICT-WIDE FIRE ALARM SYSTEMS SERVICES** contract will review and provide comments on the design of the proposed, review shop drawings, assist with acceptance of the system and program the system as outlined. This work will be done on a time and material basis with the issuance of a written authorization by the District. The firm awarded this **DISTRICT-WIDE FIRE ALARM SYSTEMS SERVICES** contract would be free to provide a bid to perform the specified fire alarm system work to the General Contractors bidding the work.

Table 1. School Building Summary

	<i>SCHOOL</i>	<i>LOCATION</i>	<i>Square Feet</i>
1	Academy del Sol High	1206 North Florida Avenue, Alamogordo	23,119
2	Administration Complex Building “A” Building “B” Building “C” Building “D” Building “F”	1211 Hawaii Avenue, Alamogordo	80,149
3	Alamogordo High	103 – Cuba Avenue, Alamogordo	338,012

	Football Stadium Baseball Stadium All portable buildings		
4	Buena Vista Elementary Portable Buildings	2600 - 19 th Street, Alamogordo	38,846
5	Chaparral Middle Portable Buildings	1401 College Avenue, Alamogordo	122,748
6	Desert Star Elementary	400 South Washington Avenue, Alamogordo	65,218
7	Grady Softball Fields	500 Canyon Road, Alamogordo	
8	High Rolls - Mountain Park Elementary Classroom Building Storage Shed Old Building	23 Karr Canyon Road, High Rolls	12,294
9	Holloman Elementary	750 – Arnold, Holloman AFB	72,985
10	Holloman Middle	381 – First Street, Holloman AFB	54,387
11	La Luz Elementary Portable Buildings	99 – Alamo, La Luz, NM	47,099
12	Maintenance	2624 - North Florida Avenue, Alamogordo	12,000
13	Mountain View Middle Portable Buildings	500 – South Washington Avenue, Alamogordo	94,122

14	North Elementary Portable Buildings Library	1300 North Florida Avenue, Alamogordo	49,995
15	Pre-K	1211 Hawaii Avenue, Alamogordo	7,000
16	Sierra Elementary	2211 – Puerto Rico Avenue, Alamogordo	44,264
17	Soccer Complex	500 South Canyon Road, Alamogordo	2,200
18	Sunset Hills Elementary Portable Buildings	2410 - 10 th Street, Alamogordo	74,000
19	Yucca Elementary Portable Buildings	310 - Dale Scott Blvd. Alamogordo	57,723

- I. Reporting:** Contractor will provide written reports relating to fire drills reported to them and accomplished at district facilities. Provide written reports relating to the recommendation to upgrade fire alarm equipment, and systems. Provide detailed written reports on any facility alarm activations to include pull station activated, audible alarm operation, alarm strobe operation, and fire alarm system notification to the district and the Department of Public Safety (DPS) Fire Captain and the Authority Having Jurisdiction. These reports will be forwarded to the district immediately after occurrence.
- J. Appearance of workers:** The Contractor’s employees providing repair or consultation services are encouraged to wear a uniform with the Contractor’s identification. The employees will always check and sign-in at the front office of the facility upon arrival and sign-out upon departure.
- K. Laws, regulations, and policies:** Contractor will review and comply with Alamogordo Board of Education Policies and New Mexico Laws governing contract work awarded and doing business with the Alamogordo Public School District. Contractor shall understand, the district and all its facilities are tobacco free, drug free, and the district will uphold a zero-tolerance policy. The Contractor shall further understand all federal, State of New Mexico, Otero County, and City of Alamogordo Municipal ordinances, including Alamogordo Board of Education Policies having jurisdiction over the performance of the contract shall apply. Acquisition of the necessary licenses and permits to fulfil this RFP and possible contract award are the sole responsibility of the Contractor at the Contractor’s expense.
- L. Disputes:** The Contractor will assist and act as the District’s agent in any dispute between the district and the authority having jurisdiction in conjunction with performed work (i.e. fire alarm system communication, response, notification, and equipment operation) under this request.

M. Experience

Qualifications: Contractor will deliver copies of New Mexico licenses authorizing the company to perform work assigned (i.e. Low Voltage Special Systems ES-3, Telephone Communication Systems ES-7, Journeyman Sound, Intercommunication and Electrical Alarm Systems ES-3J, Journeyman Telephone Communication Systems, Telephone Interconnect ES-7J, Residential/Commercial Electrical Contractor's License EE-98, City Business Registration Certificate, Occupation License, and New Mexico CRS number). Contractor shall deliver additional certifications of employees authorized to accomplish fire alarm system repair, maintenance, testing, and installation. Contractor must possess all necessary licenses and permits required to conduct its business and will acquire any necessary licenses and permits for the performance of the contract prior to the initiation of work.

Contractor's Covenants, Representations and Warranties

Contractor covenants, represents and warrants to the District that it: (a) is an organization of professionals experienced in the type of services the District is engaging the Contractor to perform; (b) is authorized, licensed and registered to do business in the State of New Mexico; (c) is qualified, willing and able to perform professional services for the District; and, (d) has the expertise, training and ability to provide professional services which will meet the District's objectives and requirements.

Contractor covenants, represents and warrants that each and every Contractor's employee engaged in the services provided under this Contract is fully qualified, able, licensed, registered, authorized, and has the expertise and training to provide such services to the District.

Contractor covenants, represents and warrants that it has sufficient resources and personnel to perform the obligations set forth in this Contract, including, without limitation, performing the services, and procuring alternative capability in the event that Contractor's primary resources in performing the services change in such a manner that such primary resources would reasonably be unable to fulfill Contractor's obligations pursuant to this Contract.

Contractor covenants, represents and warrants that its performance of this Contract does not violate any applicable law, rules or regulation. Contractor further covenants, represents and warrants that Contractor shall comply and shall cause each and every of its employees who perform services under this Contract to comply with all laws of all applicable governmental authorities in the conduct of Contractor's activities pursuant to, and arising from, this Contract.

Contractor covenants, represents and warrants that Contractor holds and maintains all permits, licenses, and/or other regulatory requirements necessary to provide the services.

Contractor covenants, represents and warrants that it shall perform this Contract in a timely and professional manner with necessary skill and diligence and that the services provided herein meet or exceed the prevailing practices and standards of the trade from which the services are provided. To the extent that the District is held financially responsible for any deficiencies in the services performed by the Contractor, Contractor agrees to cure such deficiencies at the sole cost to the Contractor.

Contractor covenants, represents and warrants that each individual signing this Contract on behalf of Contractor represents and warrants that he or she has the power and authority to bind the Contractor and that no further action, resolution, or approval is necessary to enter into this binding Contract. Contractor further covenants, represents and warrants that this Contract has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding agreement of the Contractor enforceable against the Contractor in accordance with its terms.

Contractor covenants, represents and warrants that Contractor is duly registered as an employer under the New Mexico Workers' Compensation Act and is in good standing with respect to all filings and the payment of assessments or contributions required to be made under that Act.

Contractor covenants, represents and warrants that Contractor is financially solvent and able to pay its debts as they mature.

Site Investigation

Contractor acknowledges that it has satisfied itself as to the nature and location of the Work, the general and local conditions and physical conditions and all other matters which can in any way affect the Work or the cost thereof under this Contract. Any failure by Contractor to acquaint itself with all the available information concerning these conditions will not relieve it from the responsibility for estimating properly the difficulty or cost of successfully performing the Work. The District assumes no responsibility for any understanding or representations made by any of its employees or agents during or prior to the negotiations and execution of the Contract, unless such understanding or representations are expressly stated herein and this Contract expressly provides that responsibility therefor is assumed by the District.

Changed Conditions

Contractor shall, as soon as practicable and before such physical conditions are disturbed, notify the District in writing of subsurface or latent physical conditions at the District facilities or premises of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The District will promptly investigate the conditions, and if it is found that such conditions materially differ and cause an increase or decrease in the cost of, or the time require for, performance of this Contract, an equitable adjustment shall be made and this Contract shall be modified accordingly in writing. Any claim by Contractor for adjustment hereunder shall be denied unless it has given notice as required above, provided that the District, if it determines the facts justify, may consider and adjust any such claim asserted before the date of final settlement and payment of this Contract.

Workmanship

Although Contractor has the authority to control and direct the performance of the details of the Work, the Work contemplated herein must meet the District's standards and approval and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. The District shall have the right to reject defective Work or require its correction. If Contractor fails to correct rejected Work within the time allowed by the District, the District may, by contract or otherwise, correct such workmanship and charge the cost thereof to Contractor, or the District

may terminate the right of Contractor to proceed with the Work as provided in the Termination clause of this Contract. The District, at its option, may deduct an equitable amount from the contract price/compensation for uncorrected Work if it deems it inexpedient to correct the Work not performed in accordance with this Contract. Contractor agrees to comply with all federal, state, and local laws, rules and regulations that are now or hereafter applicable to the Work, Contractor or Contractor's business. The District will designate a representative who shall be authorized to act for the District in all matters related to Contractor's performance of the Services.

Compensation

For the Work deemed satisfactorily rendered, the District agrees to pay the Contractor compensation as follows: in an amount **not to exceed \$65,000 for fire alarm monitoring plus service calls and consulting as applicable, including Gross Receipts Tax for the amounts set forth in duly authorized Purchas Order(s).**

Contractor will invoice the District monthly and in strict accordance with the Purchase Order. Contractor will mail all monthly invoices to: Alamogordo Public Schools, Attention: **Safety and Security, 1211 Hawaii Ave, Alamogordo, NM 88310.** After approval of the Contractor's monthly invoice, and provided there are no disputes regarding the invoice, the District will pay the Contractor for satisfactorily performed Work within thirty (30) working days of receipt of the monthly invoice from the Contractor.

In the event that the District terminates this Contract for Contractor's breach, the District will pay Contractor for work performed before the termination date less any setoff to which the District is entitled if and only if Contractor performed such Work in accordance with this Contract and to the District's satisfaction.

The District shall have a right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the District to recover excessive and/or illegal payments.

The Contractor's acceptance of final payment of the amount due under this Contract shall operate as a full release of the District, its board of education, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Contract.

Contractor's Personnel

The District retains the right to prior and continuing approval of any and all personnel, including subcontractor employees, if any, providing services under this Contract.

Protection of Work and Property

Contractor shall continuously maintain adequate protection of Work from damage and shall protect the District's property at all times from injury or loss arising in connection with the Contract. Contractor shall make good at its own expense any such damage, injury or loss that may result from its effort in connection with the Work. Contractor shall provide all facilities for protection required by public authority or local conditions.

Licenses, Permits and Regulations

Contractor shall, without additional expense to the District, obtain all licenses and permits required of the prosecution of the Work. Contractor shall conduct its operations in compliance with all laws, rules, regulations and ordinances of the federal, state, and local governments and their authorized agencies. Contractor shall indemnify and save harmless the District from and against any claims, damage, and expense arising from the violation by Contract of any such law, rule regulation or ordinance.

Records

Contractor shall maintain records as required in compliance with applicable federal, state, or local laws, ordinances, codes, and District policies, but in no case for a period of less than four (4) years after the date of termination of this Contract. At any time during normal business hours and as the District may deem necessary, there shall be made available to the District for examinations of all Contractor's records with respect to all matters covered by this Contract and any subsequent agreements. The District may audit, examine and/or make excerpts or transcripts from such records including but not limited to invoices, materials, payrolls, records of personnel, conditions of employment, or any other data as may be pertinent.

Insurance

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall, at its own sole cost and expense, during the term of and at all time while providing Work and services under this Contract, procure and maintain in force, or cause to be procured and maintained in force, **Commercial General Liability, Professional Liability/Errors & Omissions Insurance** in the broadest coverage commonly available, with a minimum limit of two million dollars (\$2,000,000.00) per occurrence for each such policy. The Professional Liability/Error & Omissions policy shall provide extended reporting period coverage for claims made within two (2) years after this Contract is completed or otherwise terminated.

Automobile Liability Insurance, for contractors providing a vehicle for staff, employees, or subcontractors Commercial General Liability must be a minimum of five hundred thousand dollars (\$500,000) combined single limit.

Automobile Liability Insurance, for sole contractors/subcontractors that provide their own vehicle must be a minimum of one hundred thousand dollars (\$100,000) each person with a three hundred thousand dollar (\$300,000) limit each occurrence.

The Alamogordo Public School District, its Board of Education, and employees and must be named as Additional Insureds with respect to all of the coverages. The Additional Insured Endorsement must provide coverage for losses "arising out of" the Contractor's work or operations in connection with this Contract. Contractor's policies must be primary and Non-Contributing as to any other valid and collectible insurance. Coverages and limits are to be considered as minimum requirements and in no way limit the liability of Contractor. Contractor is responsible for any deductible or self-insured retention contained within the insurance program. The Contractor's insurance shall apply separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

Certificates of insurance and complete policies, acceptable to the District, with the coverage as cited above and listing the Alamogordo School District, its board of education and employees as the certificate holders, must be submitted **not less than ten (10) working days prior to the execution of this Contract and before work begins or products are delivered by Contractor under this Contract.** Coverages represented on the certificates of insurance must show policy numbers, effective dates and limits. All policies shall evidence insurance written by a carrier licensed in the State of New Mexico and rated at least “A” in A.M. Best’s Key Rating Guide. Renewal certificates of insurance shall be provided annually until the work is completed and for three years following the completion of work. The Certificates of Insurance shall provide for not less than thirty (30) days advance notice to the District of cancellation or material change, which shall be mailed or delivered to:

The Alamogordo School District
Attention: Chief Procurement Officer
1211 Hawaii Avenue
Alamogordo, NM 88310

Contractor shall carry Workers’ Compensation insurance as required by law.

Indemnification/Hold Harmless

Contractor shall defend, indemnify, and hold harmless the District, its board of education, employees, agents from any liability for injury, death, loss, accident, or damage to any persons, or to property, and from any claims, actions, proceedings, and costs in connection therewith, including reasonable attorney fees, arising or alleged to have arisen out of any act or omission, including intentional acts or omissions and passive or active negligence, of Contractor or of anyone directly or indirectly employed by Contractor, or arising in any way from the activities of or services provided by Contractor under this Contract. Contractor shall defend all such claims and litigation, including the payment of the District’s attorney’s fees and costs, whether such claims and litigation are frivolous or not. District shall have the right to choose its own legal counsel. Contractor hereby waives all rights of subrogation against the District.

Contractor expressly and specifically assumes potential liability and agrees to indemnify, defend (including reasonable attorneys’ fees) and hold harmless the District for claims or actions brought by the Contractor’s own employees against the District, its board of education, employees or agents. Solely for the purpose of this indemnification and defense, Contractor expressly and specifically waives any immunity under the New Mexico Statutes Annotated, Chapter 52, and Workers’ Compensation.

These indemnifications shall survive the termination of this Contract.

The parties do not intend, and this provision should not be construed, to waive, alter or modify any immunities or protections afforded by the New Mexico Tort Claims Act.

Professional Responsibility

In connection with the Work hereunder, Contractor agrees that it shall meet or exceed the standard of care, skill, and diligence normally provided by a contractor in the performance of similar work and that the performance of all such Work shall meet or exceed sound and accepted industry standards and practices.

If Contractor fails to meet such standards of care, skill, diligence and/or industry standards and practices, Contractor shall be liable for all damages of whatever kind caused thereby.

Bonds

If required by the District, Contractor agrees to furnish in connection with the performance of the Work under this Contract, a payment bond for the protection of persons furnishing material and labor and a performance bond for the protection of the District and in a form acceptable to the District. The penal sum of each bond shall be one hundred percent (100%) of the Contract price. Bonds required hereunder shall be dated as of the effective date of this Contract and shall be furnished promptly by Contractor to the District, accompanied by a certified copy of the "Power of Attorney" document issued by the Surety Company.

Release

Contractor hereby accepts the District premises and adjoining areas as is and releases and discharges the District, its board of education, agents, employees, representatives and insurers from any and all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from any and all bodily injuries, deaths and damage to property arising directly or indirectly out of this Contract, including but not limited to Contractor's use of the premises and the adjoining areas, including parking areas. Contractor shall be solely and exclusively liable for all damages caused by Contractor's performance of or the failure to perform under this Contract.

The District assumes no responsibility whatsoever for any property placed on any District premises by Contractor or its officers, agents, employees, or servants and Contractor hereby releases and discharges the District, its board of education, agents, employees, representatives and insurers from any and all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from Contractor's placement of property upon District premises.

Contractor Status

The District and Contractor intend that the relationship between them shall be that of client and independent contractor. It is the intention of the parties hereto that Contractor be and remain an independent contractor and nothing contained herein shall be construed as inconsistent with that status. The District is interested only in the results obtained under this Contract. The manner, method and means of conducting the work are under the sole control of the Contractor. Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees and subcontractors during the performance of this Contract. The work performed under this Contract

will be performed entirely at the Contractor's risk. The Contractor agrees to indemnify and hold harmless the District for any and all liability or loss arising in any way out of the performance of this Contract. Contractor shall employ and direct all persons performing any Work hereunder and such person shall be and remain the sole employees of and subject to the control and direction of Contractor. No agent or employee of Contractor shall be or shall be deemed to be an employee or agent of the District. None of the benefits provided by the District to its employees, including, but not limited to, worker's compensation insurance and unemployment insurance, is available from the District to the Contractor, or the employees, or agents of Contractor.

Whenever this Contract uses the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words and phrases of like meaning, it shall be understood that the use is intended only to the extent of judging compliance with the terms of this Contract and none of these words and phrases shall imply that the District has any authority or responsibility for supervision of Contractor's forces or operations, such supervision and the sole responsibility being strictly reserved for Contractor.

Subcontracts

Contractor shall not subcontract any of Contractor's duties, obligations, or interests under this Contract unless, and no such subcontract shall be effective until, Contractor obtains the prior written consent of the District. Any attempt by Contractor to subcontract without the prior consent of the District may be deemed a material breach of this Contract. Subcontracts made without the District's prior written consent may be declared null and void.

If the Contractor contemplates a subcontract, the Contractor shall provide the following information promptly at the District's request: (1) a description of the work to be performed by the subcontractor; (2) a draft copy of the proposed subcontract; and (3) other information and/or certifications requested by the District.

The issuance of subcontracts shall not relieve Contractor of any of its obligations under this Contract, including, without limitation, the obligation to properly supervise and coordinate the work of subcontractors. Such subcontracts shall be in such form and contain such provisions as are required by this Contract or as the District may otherwise prescribe; provided, however, that nothing contained herein shall create any contractual relationship between any subcontractor and the District.

Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the District's approval of the Contractor's proposed subcontract.

The District's consent to subcontract shall not waive the District's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. Contractor is responsible to notify its subcontractors of this District right.

Contractor shall indemnify and hold the District harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were Contractor employees.

Contractor shall be solely and exclusively liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the District's consent to subcontract.

Contractor intentionally, voluntarily, and knowingly assumes the sole and entire liability to the Contractor's employees and agents, and to any individual or entity not a party to this Contract, for all loss, damage, or injury caused by the Contractor or the Contractor's employees and agents in the course of their employment.

Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the District from each approved subcontractor. Before any subcontractor employee may perform any work hereunder, Contractor shall ensure delivery of all such documents to:

Alamogordo Public Schools
Attention: Chief Procurement Officer
1211 Hawaii Avenue
Alamogordo, New Mexico 88310

Use of Premises

Contractor shall confine the storage of materials and equipment in locations acceptable to the District and in accordance with all applicable laws, rules, regulations and ordinances. Contractor shall provide adequate safety barriers, signs, lanterns, and other warning devices and services to properly restrict access and properly protect any person having access to or near the Work site.

Confidentiality

All material given to or made available to Contractor, or prepared or assembled by Contractor by virtue of this Contract that the District identifies as proprietary or confidential information, or otherwise requests to be kept confidential, will be safeguarded by Contractor and shall not be disclosed to any individual or organization without the prior written approval of the District. All information, data, or other material provided by the District to Contractor shall be subject to the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

Cleaning Up

Contractor shall, at all times, keep the Work areas, including storage areas used by it, in a clean and orderly condition and free from combustible debris and waste materials. Upon completion of the Work, Contractor shall remove all rubbish from and about the Work areas.

Trespass

Contractor shall be solely responsible and liable for any act of trespass or any injury to adjacent property, resulting from or in connection with the operations under this Contract. Contractor shall be liable for any claims that arise from the deposit of any debris of any kind upon adjacent property.

Liens

Contractor shall at all times promptly pay for all materials, equipment, and labor used in the performance of this Contract and shall maintain all materials, equipment, structures, premises and other subject matter free and clear from all laborer, materialmen, and mechanic liens; provided that all payments due to Contractor have been paid by the District. Contractor shall indemnify and save the District harmless from all such liens arising out of the Work. Contractor shall provide to the District, upon its request, reasonable evidence showing that all materials, equipment, labor and subcontractors have been paid in full, except for any outstanding claims relating thereto; which claims may, at the District's option, be assigned to the District.

Appropriations

The terms of this Contract, and any subsequent renewal thereof, are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and the New Mexico Department of Education for the performance of this Contract. If sufficient appropriations and authorization are not made by the Legislature, this Contract shall terminate, without any penalty or damages whatsoever against the District, upon written notice being given by the District to Contractor. The District's decision as to whether sufficient appropriations and authorizations are available shall be accepted by Contractor and shall be final.

Conflict of Interest

Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor agrees to comply with the requirements of the New Mexico Financial Disclosure Act (Section 1016A1, et seq., NMSA 1978) and the Governmental Conduct Act (Section 10161 et seq. NMSA 1978) as applicable. Contractor represents and warrants that the services to be performed under this Contract shall not result in a conflict of interest prohibited by state or federal laws, rules or regulations.

Nondiscrimination

The Contractor warrants that during its performance of this Contract, Contractor, or any of its employees, agents, or subcontractors, will not violate any of the discrimination laws of the United States, including, but not limited to, on the basis of age, sex, sexual orientation, race, color, religious belief, national origin, marital status, status as a qualified individual with a disability or handicap or as a disabled veteran.

Foreign Corrupt Practices Act

Contractor represents and warrants to the District that it is aware of the requirements of the United States Foreign Corrupt Practices Act (the "FCPA") and will not take any action that could violate the FCPA or expose the District to liability under the FCPA. Specifically, Contractor represents and warrants that, in connection with this Contract, Contractor and

its owners, officers, directors, employees, representatives or agents have not provided and will not provide, offer or promise to provide, or authorize the provision directly or indirectly of, any money, gift, loan, service or anything of value to any government official (or any agent, employee or family member thereof), any political party or candidate for political office, or any third party, for the purpose of influencing or inducing any act, omission or decision of such government official or candidate, or of the government to obtain or retain business, or direct business to any person, or to secure any improper advantage.

Notice of Penalties

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

Force Majeure

The District and the Contractor shall be mutually relieved from any liability as a result of the onset of a force majeure condition. For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a party and which makes a party's performance of its obligations under the Contract impossible or so impractical as reasonably to be considered impossible under the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

Termination

This Contract will remain in effect unless terminated by either party in accordance with this provision. The parties may mutually agree to terminate this Contract any time by written agreement signed by both parties.

Notwithstanding anything in the paragraph immediately above or anything in this Contract to the contrary, the District in its sole discretion shall have the right, at any time and for any reason whatsoever, including its own convenience, upon thirty (30) calendar days written notice, to suspend or terminate Contractor's services, or any portion thereof, and to terminate this Contract, in whole or in part, without regard to whether Contractor has defaulted or failed to comply with the provisions of this Contract.

Either party may terminate this Contract in the event of a breach by the other party. To be effective, the non-breaching party must give written notice to the other party of its intent to terminate. If the breaching party does not entirely cure the breach within fifteen (15) calendar days of the date of the notice, then the non-breaching party may terminate this Contract at any time thereafter by giving a written notice of termination as provided in the preceding paragraph of this Contract.

Notwithstanding any of the above provisions of this Termination section of this Contract, the District may terminate this Contract immediately by written notice to the Contractor upon cancellation, denial, suspension, revocation or non-renewal of any license, permit or certificate, including, without limitation, insurance policy or Certificate of Insurance, that Contractor must hold to provide services under this Contract.

Dispute Resolution

Disputes on any matter relating to this Contract shall be discussed and resolved by authorized representatives of each Party who have the authority to bind the Party that they represent. The Parties shall use their best efforts to amicably and promptly resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable time period as determined by the representatives, the Parties may pursue any other legal, mediation, or arbitration means for resolving disputes which may arise from or under this Contract.

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, certified, return receipt requested, postage prepaid, as follows:

To District:	Alamogordo Public Schools Attention: Chief Procurement Officer 1211 Hawaii Avenue Alamogordo, New Mexico 88310 procurement@alamogordoschools.org
To Contractor:	Executive Security Associates, LLC 918 Texas Ave. Alamogordo, NM 88310

Invalid Term or Condition and Severability

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. Should any part of this Contract be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Contract should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

No waiver

The failure of the District to insist upon Contractor's compliance with its obligations under this Contract in any one or more instances shall not operate to relieve Contractor from its duty to comply with such obligations in all other instances.

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 Section 38-3-1 (G) NMSA 1978. 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.

Immunities and Defenses

The District does not waive or relinquish any immunity, defense or protection on behalf of itself, its officers, board of education members, employees and agents as a result of the execution of this Contract and the performance of the provisions contained herein.

No Assignment

Contractor shall not assign any interest, transfer any interest, or assign any claims for money due or to become due in this Contract or any appendices, addenda, or amendments thereto.

No Third-Party Beneficiaries

District and Contractor are the only parties to this Contract. Nothing in this Contract provides any benefit or right, directly or indirectly, to third parties. The Parties shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Contract.

Other Contractors

The District reserves the right to enter into other agreements for work additional or related to the subject matter of this Contract, and Contractor agrees to cooperate fully with these other contractors and with the District. When requested by the District, Contractor shall coordinate its performance under this Contract with such additional or related work. Contractor must not interfere with the work performance of any other contractor or District employees.

Entire Agreement

This Contract and all provisions hereof shall inure to and be binding upon the respective Parties hereto, their successors, and assigns. When signed by both Parties, this Contract (and any attachments or appendices thereto) is the final and entire Contract and supersedes any prior understanding or written or oral Contract relative to the subject matter hereof. This Contract may not be altered, changed or amended, except by written instrument signed by both Parties.

Attachments

INSERT LIST OF ATTACHMENTS, IF ANY

ATTACH EACH AND EVERY ATTACHMENT LISTED

The District and the Contractor have entered into this Contract as of the Effective Date. Services will not be provided and products will not be received or delivered until all required documents and insurance requirements in this contract have been provided.

The contract shall not become effective until it has been signed by the Board of Education and an approved purchase order has been issued to the Contractor.

Approved by the Alamogordo Public School's Board of Education on _____.

DISTRICT:

Alamogordo Public Schools

By: _____
Signature

Print Name

Title: _____

Date: _____

By: _____
Signature

Print name

Title: _____

Date: _____

CONTRACTOR:

Executive Security Associates

By: Sylvia M. Adler
Signature

Sylvia M. Adler

Print Name

Title: Business Manager

Date: April 13, 2023