



## Board of Education Agenda Request

Name/Business Name:

Phone Number(s):

Address or Site/Department:

E-Mail Address:

Regular Meeting

Special Meeting

Work Session

Requested Meeting Date:

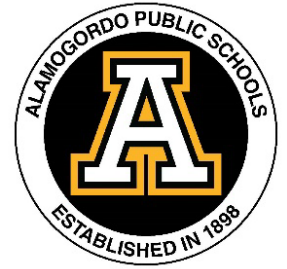
Agenda Topic:

Agenda Category:  Action Item  Presentations/Recognitions  
 Consent Agenda (Action)  Departmental Reports  
 Information to the Board  APS Board Policy Manual

Name and Title of Person(s) Presenting Agenda Item:

**Please e-mail this form to [boardbook@alamogordoschools.org](mailto:boardbook@alamogordoschools.org) or [lisa.patterson@alamogordoschools.org](mailto:lisa.patterson@alamogordoschools.org) and attach all supporting documents to the e-mail.**

**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**

**From: Chief Procurement Officer, Marie Bouma**

**Date: May 17, 2023**

**Re: Executive Summary of Contract**

---

eLuma, LLC is a contractor that specializes in professional Online Therapy Services. eLuma, LLC was first awarded the contract for the 2020/2021 school year arising from RFP 001-2021 Ancillary and Related Services for Special Education. This will be the fourth year of this contract. The contract is budgeted out of the Special Education funds and is not to exceed \$66,000. The Department Head is Melissa Cole and is overseen by Deputy Superintendent of Teaching and Learning.

APS will utilize eLuma, LLC for Online Speech Language Pathology Therapy with our Special Education Students.

Respectfully,

*Marie Bouma*

Marie Bouma  
Chief Procurement Officer  
Alamogordo Public Schools



**ALAMOGORDO PUBLIC SCHOOLS  
PROFESSIONAL SERVICES CONTRACT NO. 001-2021-02-C4**

THIS PROFESSIONAL SERVICES CONTRACT (the “Contract”) is made and entered into this **17th day of May, 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 **eLuma, LLC**, with its principal place of business at **2801 N. Thanksgiving Way, Suite 170, Lehi UT 84043** (herein referred to individually as “Party” or collectively as “Parties”).

WHEREAS, the District requires certain **Ancillary and Related Professional Services for Special Education** services as set forth in its Request for Proposals No. **001-2021**; and

WHEREAS, Contractor submitted a proposal to provide such **Ancillary and Related Professional Services for Special Education** 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. **001-2021**.

Term

The Term of this Contract commences on **July 01, 2023** and ends on **June 30, 2024**. This is the fourth year of a possible annually renewable four-year contract. It is the District’s option to renew this contract annually, not to 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

Incorporation

The Parties agree that this Contract is in reference to and incorporates the Alamogordo Public School’s Request for Proposals No. **001-2021** 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. **001-2021** 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 agrees to perform any and all consultation, services, activities, tasks set forth or described in the District's Request for Proposals No. **001-2021** and as called for by this Contract and approved Purchase Orders (the "Work"). All Work called for by individual Purchase Orders shall be performed in strict accordance with this Contract.

### Specifications

The Alamogordo Public School (APS) district provides special education and ancillary/related services to eligible students within an inclusive educational model. Students with disabilities who are eligible for special education services are educated primarily in the general education classroom setting and may receive some services in a pull-out setting. Ancillary and related services professionals are expected to:

1. Provide direct therapy services as deemed appropriate within the general educational classroom setting or virtually if requested by district.
2. Provide consultative/indirect services to teacher, administrators, parents and other service providers
3. Conduct formal and informal assessments to identify the student's disabilities as they relate to the educational environment, with virtual assessment capabilities as requested or as needed by the district.
4. Conduct initial evaluations and complete reevaluations on designated timelines
5. Develop strategies and methods to implement short- and long-term goals and objectives
6. Provide in-service training upon request
7. Consult with physicians when needed regarding certain specific situations
8. Work within the Alamogordo Public School District calendar, including all school closings, unless an alternative schedule has been mutually agreed upon with the Director of Special Education
9. Physical Therapists will be required to supervise Physical Therapy Assistants, whether contracted service provider or employee, in compliance with the regulations of the New Mexico Physical Therapy Board
10. Occupational Therapists will be required to supervise Certified Occupational Therapy Assistants, whether contracted service provider or employee, in compliance with the regulations of the New Mexico Occupational Therapy Board
11. Other ancillary providers may be required to supervise appropriate assistants in accordance with relevant New Mexico licensing boards, and within the constraints of their professional licensing
12. Complete necessary reporting and paperwork accurately, succinctly and in a timely manner, including Medicaid billing forms, evaluation reports, Individualized Education Plans (IEP), reporting, and other documentation as required

13. Work collaboratively with other personnel
14. Travel between schools within the district to provide such services deemed necessary by the Directors of Special Education and Health Services

- A. Contractor will supply contracted professionals with the requisite professional licenses and accreditation to provide direct and indirect services for students in New Mexico. In addition, New Mexico Public Education Department (PED) licensing is required for ancillary and related services. Successful proposers will be responsible for providing suitable, credentialed professionals and will ensure all required credentialing, licensing, continuing education, background investigations and insurance coverages remain in full force and effect throughout the term of the contract.
- B. Individual service providers must meet Medicaid Provider eligibility requirements and must be certified in accordance with Medicaid regulations. Providers will ensure all necessary documentation is complete. Contractor will be required to provide the National Provider Identifier (NPI) number for each professional provided to APS.
- C. Contracted professionals must provide appropriate diagnostic and therapeutic direct and indirect services during school hours or other hours as mutually agreed upon by the Contractor and Director of Special Education.
- D. Contracted professionals must have:
  1. Good interpersonal and collaborative skills
  2. Experience with a variety of assistive technology and equipment
  3. Valid driver's license
  4. The ability to complete and pass required District background check procedures

#### Other Information

- Contractor will provide/furnish at no extra cost or charge to the District, all cell phones, computers, software and laptop computers for respondent use to efficiently and effectively perform the Work.
- Contractor is responsible for having and maintaining comparable District virus protection software on their PCs or laptops to ensure protection and to fully comply with all safeguards and integrity of personnel and student data contained on any School District computer system as applicable to District EJA-RA Acceptable use of Technology Resources Regulation.
- The School District will provide student records and school locations of those students needing services. The School District will provide copier access, computer printer access, access to an on-line computer connection at school sites as well as access to computerized web-based Individualized Education Plan (IEP) system for recording student data.

Unless otherwise specifically called for by the Contract or by individual Purchase Orders, Contractor shall provide/furnish at no extra cost or charge to the District, all materials necessary to efficiently and effectively perform the 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 required 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 \$66,000**, not including Gross Receipts Tax, for the amount(s) set forth in duly authorized Purchase Order(s). The annual rate for the Work performed per student under this Agreement is the **not to exceed** rates per professional

discipline listed on **Appendix G**.

Contractor will invoice the District monthly and provide the District with a monthly billing report in strict accordance with the Purchase Order. Contractor will mail all monthly invoices to: Alamogordo Public Schools, Attention: **Department of Special Education, PO Box 650, 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:

Alamogordo Public 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, 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’ 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 follow:

**To District:**

Alamogordo Public Schools  
Attention: Chief Procurement Officer  
1211 Hawaii Avenue  
Alamogordo, New Mexico 88310  
[procurement@alamogordoschools.org](mailto:procurement@alamogordoschools.org)

**To Contractor:**

**eLuma, LLC  
Attention: John Higbee  
2801 N. Thanksgiving Way, Suite 170  
Lehi UT 84043**

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

**RFP #001-2021 Ancillary Services**

**Appendix G – Price Proposal**

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:**

eLuma, LLC

By: Chad Bundy  
Signature

Chad Bundy  
Print Name

Title: Senior Director

Date: 4-27-23



APPENDIX G

Company Name eluma

RFP \_\_\_\_\_ PRICE PROPOSAL EVALUATION SUBMITTAL\*

\*Please complete a "not to exceed" cost/hour for all services you offer. You are NOT required to provide all services listed below to have a successful proposal.

PROFESSIONAL DISCIPLINE/SERVICE	NOT TO EXCEED COST PER HOUR NOT INCLUDING GROSS RECEIPTS TAX
Physical Therapist (PT) - Teletherapy PT Services	\$650 / per diem
Physical Therapist Assistant (PTA)	
Occupational Therapist (OT)	
Certified Occupational Therapist Assistant (COTA)	
Speech Language Pathologist (SLP)	
Speech Language Pathologist Assistant (SLPA)	
Diagnostician	
School Psychologist	
Sign Language Interpreter	
Social Worker	
Music, Art or Recreational Therapist	
Audiologist	
Counselor	
Teacher	
Gifted Teacher	
Certified Behavior Analyst	
<b>Teletherapists (please list Teletherapist services available):</b>	
Speech Language Pathologist	\$1650 / per student
Occupational Therapist	\$1650 / per student
Sign Language Interpreter	
School Psychologist	\$650 / per diem
Certified Behavior Analyst	
Gifted Teacher	