



## 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:

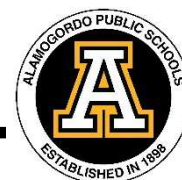
Agenda Topic:

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



Business & Finance  
Marie Bouma Chief Procurement Officer  
1211 Hawaii Avenue  
Alamogordo, NM 88310

Office: (575) 812-6044  
Fax: (575) 812-6069

## MEMORANDUM

**To: Board of Education**

**From: Chief Procurement Officer Marie Bouma**

**Date: January 12, 2024**

**Re: Executive Summary of Contract**

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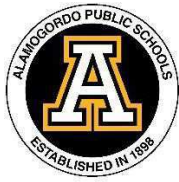
Studio Southwest Architects is an architectural firm based in Albuquerque, NM that specializes in exceptional building design and planning. This is a contract extension resulting from RFP 013-2021 Design Professional Chaparral Middle School. The purpose of the extension is to fulfill the estimated remaining design requirements for Chaparral Middle School. There will be no additional cost to the district from the original contract. This Contract is budgeted out of Capital Outlay and is not to exceed \$199,746.02. The Department Head for this contract is Ken Barnett.

APS will be utilizing Studio Southwest Architects for additional design services required for the new Chaparral Middle School.

Respectfully,

A handwritten signature in cursive script that reads 'Marie Bouma'.

Marie Bouma  
Chief Procurement Officer  
Alamogordo Public Schools



**ALAMOGORDO PUBLIC SCHOOLS  
PROFESSIONAL SERVICES CONTRACT NO. 013-2021-C2**

THIS PROFESSIONAL SERVICES CONTRACT (the “Contract”) is made and entered into this January 18, 2024 (“Effective Date”) by and between the Alamogordo Public Schools (“District” or “APS”), a New Mexico public school district, whose address is 1211 Hawaii Ave, Alamogordo, New Mexico, and **Studio Southwest Architects (“Architect”)** with its principal place of business at **2101 Mountain Rd NW, Albuquerque, NM 87104**, (herein referred to individually as “Party” or collectively as “Parties”).

WHEREAS, the District requires certain **Additional Design Professional Services for Chaparral Middle School** as set forth in its Request for Proposals No. **013-2021**;

WHEREAS, Architect submitted a proposal to provide such **Additional Design Professional Services for Chaparral Middle School** and Architect 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 Architect that for the considerations set forth herein, Architect shall provide said services to the District as set forth below and in RFP No. **013-2021 (the “RFP”)**.

Term

The Term of this Contract commences on **January 18, 2024** and ends on **January 30, 2026**.

Incorporation

The Parties agree that this Contract is in reference to and incorporates the **RFP** and all documents included therein and attachments and appendices thereto, and Architect’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 RFP and all documents included therein and attachments and appendices thereto, and Architect’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 Architect shall then complete the work according to the interpretation made by the District.

Scope of Work

Under the terms of this Contract, Architect, defined as Studio Southwest Architects and supporting design consultants identified in Exhibit B (“Consultants”), will provide additional planning, architectural and engineering services beyond the scope and constraints of basic design services

provided for in the New Mexico Public School Facilities Authority (PSFA) Design Professional Agreement for the design of Chaparral Middle School (the “Project”) as follows

No provision of this Agreement shall exclude, exempt, or negate the requirements contained within the Public-School Facilities Authority Design Professional Agreement, including the requirement to provide architectural and design services for a complete and fully functional school building of the size, scope and budget as described in the PSFA agreement.

### **III. SPECIFICATIONS**

Architect and its Consultants will interact with the District and community in a series of targeted workshops and meetings to define:

- The project’s educational vision
- The buildings and landscapes that catalyze that vision
- The sustainable initiatives that support high performance design of the buildings and landscapes
- The fundraising collateral that will help you raise any additional funds necessary to meet your aspirations

Architect and its Consultants will provide design development, schematic design, and construction documents for certain building and sitework elements deemed above adequacy by PSFA, including:

- Outdoor learning space(s)
- Upgraded architectural details and material specifications
- Above adequacy landscape design

Architect and its Consultants will develop and provide the following Owner documents for their use in subsequent construction projects:

- Construction Specifications Manual which states all District standards and preferences for equipment and materials to be used in future new or remodeled construction projects.
- Strategic Planning Document which details the basis of design standards and concepts, including in depth analysis of District instructional delivery methods that require specific spaces and concepts to be included in future building designs.

Architect and its consultants will develop and execute a series of meetings and workshops aimed at discovering the district and community visions for learning, teaching and community interaction at Chaparral Middle School. Included in these efforts will be:

- Team visits to the existing middle school in addition to the elementary and high schools to understand curriculum and pedagogy continuity
- Benchmarking the aspirations for APS/Chaparral Middle School with other districts/schools across the country to learn from parallel efforts

- Workshops with District and school leaders, educators and community as agreed to by APS
- Data analysis and synthesis from previous APS efforts and the scope outlined above.
- Deliverable: Educational Strategic Plan (pdf format)
- Supplemental and Additional Services set forth in Exhibit A.

Architect and its Consultants will develop and implement strategies to marry the concepts proposed in the Educational Strategic Plan with enhanced Programming, Master Planning and three dimensional Concept Design. Included in these efforts will be:

- Discussions with district and school leaders, educators and community as agreed to by APS about programming improvements over adequacy of existing Educational Specifications spaces and addition of program spaces deemed necessary but not included in the Educational Specifications
- Detailed Site Analysis, Master Planning and Landscape Master Planning for the entire 24 acre campus, with specific focus on integration of indoor and outdoor spaces that can be both school and community amenities.
- Architectural visioning, biophilic pattern integration and three-dimensional Concept Design to establish character of the project in a way that catalyzes and supports the Educational Strategic Plan.
- Financial feasibility study in the form of a construction and project cost estimate to ascertain the budgets required to fulfill the districts vision.
- Deliverable: Enhanced Program, Campus Master Plan, Landscape Master Plan, Campus Concept Design (pdf format).

Architect and its Consultants will develop and implement a series of design and engineering analyses, workshops and modelling exercises to establish project environmental and sustainability goals above the New Mexico Public School Facilities Authority Energy Star. Included in these efforts will be:

- Research and analysis of environmental and sustainable strategies that will improve Chaparral's environmental performance above adequacy
- Integrated Design Workshop with the entire design team that establishes the project goals for health, wellness, resource use, adaptability/flexibility, economy and equity
- Benchmarking to other schools/districts with similar high environmental performance aspirations
- Establishing desirable and achievable learning opportunities available with high performance buildings and landscapes
- Early energy and water analysis and modelling to inform the Master Plan and Concept Design and establish pathway to ILFI Zero Energy certification
- Review of additional certification options such as LEED, WELL or ILFI Living Building Challenge
- Deliverable: High Performance Design Report (pdf format)

Architect and its Consultants will create an initial set of renderings and narratives to support General Obligation Bond election campaigns, fundraising efforts, and donor engagements. Included in these efforts will be:

- One set of renderings including an overall site plan, ground level floor plan, and (4) 3D views to be chosen with the district
- Donor engagement meetings to support APS' efforts to fundraise for the project (up to 4 total in-person or online meetings)
- Deliverables: Renderings as described above (pdf format)

**A. Laws, regulations, and policies:** Architect will review and comply with the Alamogordo Public Schools Board of Education Policies and New Mexico Laws governing contract work awarded and doing business with the District. Architect shall understand the District and all its facilities are tobacco free, drug free, and the District will uphold a zero tolerance policy. Architect shall further understand that all federal, State of New Mexico, Otero County, and City of Alamogordo Municipal ordinances, including the Alamogordo Public Schools 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 Contract award are the sole responsibility of Architect at the Architect's expense.

**B. Disputes:** Architect 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 under this request.

**C. Qualifications:** Architect will deliver copies of New Mexico licenses authorizing Architect to perform work assigned Architect 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.

**D.**

Architect's Covenants, Representations and Warranties

Architect 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 Architect 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.

Architect covenants, represents and warrants that each and every Architect'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.

Architect 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 Architect's primary resources in

performing the services change in such a manner that such primary resources would reasonably be unable to fulfill Architect's obligations pursuant to this Contract.

Architect covenants, represents and warrants that its performance of this Contract does not violate any applicable law, rules or regulation. Architect further covenants, represents and warrants that Architect 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 Architect's activities pursuant to, and arising from, this Contract.

Architect covenants, represents and warrants that Architect holds and maintains all licenses necessary to provide the services under this Contract.

Architect 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 Architect, Architect agrees to cure such deficiencies at the sole cost to the Architect.

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

Architect covenants, represents and warrants that Architect 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.

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

#### Compensation

For the Work deemed satisfactorily rendered, the District agrees to pay Architect compensation as follows: in an amount **not to exceed \$199,746.02, including Gross Receipts Tax, for Additional Design Professional Services for Chaparral Middle School for the amounts set forth in duly authorized Purchase Order(s).**

Architect will invoice the District monthly for services rendered and in strict accordance with the Purchase Order. Architect will invoice monthly in proportion to services performed, as listed in Exhibit A (Additional Services Proposal). Architect will mail all monthly invoices to: Alamogordo Public Schools, Attention: **Capital Outlay, 1211 Hawaii Ave, Alamogordo, NM 88310.** After approval of Architect's monthly invoice, and provided there are no disputes regarding the invoice,

the District will pay Architect for satisfactorily performed Work within thirty (30) working days of receipt of the monthly invoice from Architect.

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

The District shall have the 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 Architect'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.

#### Architect's Personnel

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

#### COPYRIGHTS AND LICENSES

Architect and the District warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

Architect and its Consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights, except as granted herein. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is fully permitted and authorized, and to the extent permitted by law, is not to be construed as publication in derogation of the reserved rights of Architect and its Consultants.

Architect grants to the District a fully paid, irrevocable, permanent and nonexclusive license to use Architect's Instruments of Service for purposes of designing, permitting, contracting for, constructing, using, maintaining, altering and adding to the Project, provided that the District substantially performs its obligations under this Contract. Architect shall obtain similar fully paid, irrevocable, permanent and nonexclusive licenses for Architect and the District from Architect's Consultants consistent with this Contract. The license granted under this section permits the District to authorize Architects, its Consultants, Subcontractors, Sub-subcontractors, and suppliers, as well as the District's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established, solely and exclusively for use in performing services or construction for the Project. Unless Architect terminates this Contract for failure to make substantial payment as required by this Contract, which remains uncured for sixty



(60) days after notice detailing the alleged non-payment, the license(s) and rights granted in this Section shall terminate. If the District reasonably challenges the obligation to make payment, the license(s) and rights granted herein shall not terminate until the payment issue is resolved in favor of Architect.

Except for the licenses and rights granted in this section, no other license or right shall be deemed granted or implied under this Contract. Any unauthorized use of the Instruments of Service shall be at the District's sole risk and without liability to Architect and its Consultants.

Architect shall have the right to include photographic or artistic representations of the design of the Project among Architect's promotional and professional materials. Any use of the District's name by Architect shall be strictly limited to identifying the District as a client of Architect for the purpose of the Project. Architect shall be given reasonable access to the completed Project, within sixty (60) days of completion, to make such representations. However, Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised Architect in writing of the specific information considered by the District to be confidential or proprietary. The District shall provide professional credit for Architect in the District's promotional materials for the Project by identifying Architect as the architect for the Project. This Section shall survive the termination of this Contract unless the District terminates this Contract. Renderings and/or images generated by Architect over the course of the Project shall be marked with a logo and copyright symbol that shall remain visible on any promotional material in print, television, internet, and social media. If media outlets require imagery to promote a story, Architect will be notified of image use at the time of the request if time permits.

Except as otherwise stated the provisions of this Article shall survive the termination of this Contract.

#### Records

Architect 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 Architect'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 Architect, Architect 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 one million dollars (\$1,000,000.00) 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 Architects 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 Architects/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 District, its Board of Education, and employees 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" Architect's work or operations in connection with this Contract. Architect'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 Architect. Architect is responsible for any deductible or self-insured retention contained within the insurance program. Architect'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 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 Architect 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 Schools  
Attention: Chief Procurement Officer  
1211 Hawaii Avenue  
Alamogordo, NM 88310

Architect shall carry Workers' Compensation insurance as required by law.

#### Indemnification/Hold Harmless

Architect 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 Architect or of anyone

directly or indirectly employed by Architect, or arising in any way from the activities of or services provided by Architect under this Contract. Architect 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. Architect hereby waives all rights of subrogation against the District.

Architect 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 Architect's own employees against the District, its board of education, employees or agents. Solely for the purpose of this indemnification and defense, Architect 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, Architect agrees that it shall meet or exceed the standard of care, skill, and diligence normally provided by a Architect 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 Architect fails to meet such standards of care, skill, diligence and/or industry standards and practices, Architect shall be liable for all damages of whatever kind caused thereby.

The District assumes no responsibility whatsoever for any property placed on any District premises by Architect or its officers, agents, employees, or servants and Architect 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 Architect's placement of property upon District premises.

#### Architect Status

The District and Architect intend that the relationship between them shall be that of client and independent contractor. It is the intention of the parties hereto that Architect 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 Architect. Architect 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 Architect's risk. Architect 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. Architect 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 Architect. No agent or employee of Architect 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 Architect, or the employees, or agents of Architect.

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 Architect's forces or operations, such supervision and the sole responsibility being strictly reserved for Architect.

#### Subcontracts

Architect shall not subcontract any of Architect's duties, obligations, or interests under this Contract unless, and no such subcontract shall be effective until, Architect obtains the prior written consent of the District. Any attempt by Architect 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 Architect contemplates a subcontract, the Architect 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 Architect 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.

Architect shall remain fully responsible for all performances required of it under this Contract, including those that Architect has determined to subcontract, notwithstanding the District's approval of Architect'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. Architect is responsible to notify its subcontractors of this District right.

Architect 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 Architect employees.

Architect 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.

Architect intentionally, voluntarily, and knowingly assumes the sole and entire liability to the Architect'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 Architect or the Architect's employees and agents in the course of their employment.

Architect 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, Architect shall ensure delivery of all such documents to:

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

#### Confidentiality

All material given to or made available to Architect, or prepared or assembled by Architect 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 Architect 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 Architect shall be subject to the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

#### 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 Architect. The District's decision as to whether sufficient appropriations and authorizations are available shall be accepted by Architect and shall be final.

#### Conflict of Interest

Architect 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. Architect agrees to comply with the requirements of the New Mexico Financial Disclosure Act (Sections 10-16A-1, et seq., NMSA 1978) and the Governmental Conduct Act (Sections 10-16-1 et seq. NMSA 1978) as applicable. Architect 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 Architect warrants that during its performance of this Contract, Architect, 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

Architect 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, Architect represents and warrants that, in connection with this Contract, Architect 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 Architect 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 or Suspension

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 Architect's services, or any portion thereof, and to terminate this Contract, in whole or in part, without regard to whether Architect 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.

If the District fails to make payments to Architect in accordance with this Contract, such failure shall be considered cause for suspension of performance of services under this Contract. If Architect elects to suspend services, Architect shall give seven days' written notice to the District before suspending services. Before resuming services, the District shall pay Architect all sums due prior to suspension. Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

If the District suspends the Project for more than 90 cumulative days for reasons other than the fault of Architect, Architect may terminate this Contract by giving not less than seven days' written notice to the District.

Either Party may terminate this Contract upon not less than seven days' written notice should the other Party fail substantially to perform in accordance with the terms of this Contract through no fault of the Party initiating the termination.

The District may terminate this Contract upon not less than seven days' written notice to Architect for the District's convenience and without cause.

If the District terminates this Contract for its convenience or Architect terminates this Contract, the District shall compensate the Architect for services performed and reimbursable expenses incurred prior to termination.

Except as otherwise expressly provided herein, this Contract shall terminate one year from the date of Substantial Completion.

### 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.

If mediation fails to resolve the issues, then this dispute will be submitted to binding arbitration under the laws of the State of New Mexico, before a single arbitrator in accordance with the New Mexico Arbitration Act and this Section \_\_\_\_. Claims subject to arbitration shall be decided by a single arbitrator selected by the mutual agreement of the Parties, or if the parties do not agree on an arbitrator within 14 days after receipt of a written demand for arbitration by a Party, by appointment by the Chief Judge of the Judicial District Court of Otero County, New Mexico upon the application of either party as provided in NMSA 1978, Section 44-7A-12. Each Party may propose two arbitrators to the Chief Judge for consideration. Unless otherwise agreed by the Parties, the arbitrator shall be a retired New Mexico federal, district court or appellate judge. Claims not having a monetary amount such as actions for declaratory judgments or actions for injunctive relief are not subject to arbitration. Persons not a party to this Contract such as the Consultant, Architect, subcontractors and suppliers may be joined as parties in any such arbitration and multiple claims

may be consolidated in a single arbitration proceeding. The District and Architect shall include a clause similar to this Section 9.4 in the agreement between District and Architect. The costs and fees of the arbitrator shall initially be divided equally between the Parties, but the arbitrator may include a disproportionate allocation of the cost of the arbitrator in the arbitrator's decision. The arbitrator shall set any matter for hearing within 60 days of his or her appointment, shall provide for depositions, interrogatories and requests for production prior to the hearing and shall require that counter-claims be filed within 15 days after his or her appointment. Notice of hearing shall be given 30 days in advance. The arbitrator shall render his or her decision within 20 days after completing the hearing. The hearing shall be held on consecutive days. Claims involving a monetary value in excess of twenty percent (20%) of the Cost of the Work, or having no monetary value, shall not be subject to arbitration, unless otherwise agreed by the Parties in writing. All Parties necessary for a final and consistent resolution of the issues submitted must be joined in the arbitration, unless the Parties agree otherwise. If these additional necessary parties cannot be or refuse to be joined in the arbitration, then one or both parties may waive arbitration and pursue resolution of the Claim through litigation in a court of competent jurisdiction.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute of legal or equitable proceedings based on the claim, dispute or other matter in question.

The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### 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

**To Architect:**

**Studio Southwest Architects  
2101 Mountain Rd NW  
Albuquerque, NM 87104**

#### 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 Architect's compliance with its obligations under this Contract in any one or more instances shall not operate to relieve Architect 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, Architect 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

Architect 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 Architect 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 Architects

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

### **MISCELLANEOUS PROVISIONS**

This Contract shall be governed by the law of the State of New Mexico.

The District and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Contract. Neither the District nor Architect shall assign this Contract without the written consent of the other, except that the District may assign this Contract to a lender providing financing for the Project if the lender agrees to assume the District's rights and obligations under this Contract, including any payments due to Architect by the District prior to the assignment.

If the District requests Architect to execute certificates, the proposed language of such certificates shall be submitted to Architect for review at least 14 days prior to the requested dates of execution. If the District requests Architect to execute consents reasonably required to facilitate assignment to a lender, Architect shall execute all such consents that are consistent with this Contract, provided the proposed consent is submitted to Architect for review at least 14 days prior to execution. Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Contract.

Nothing contained in this Contract shall create a contractual relationship with, or a cause of action in favor of, a third party against either the District or Architect.

Unless otherwise required in this Contract, Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

The invalidity of any provision of the Contract shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract shall be construed, to the fullest extent permitted by law, to give effect to the Parties' intentions and purposes in executing the Contract.

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.

The District and the Architect 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 Architect.

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:**

Studio Southwest Architects

By:  \_\_\_\_\_  
Signature

Charles Andrew Benson  
Print Name

Title: Principal | Vice President

Date: 01/11/2-24