



PRICE AGREEMENT NO. 13533

AMENDMENT NO. 3

ALBUQUERQUE PUBLIC SCHOOLS – PROCUREMENT DIVISION
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ALBUQUERQUE, NM 87125
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Walsh, Anderson, Gallegos, Green & Trevino P.C.
500 Marquette NW, Suite 1360
Albuquerque, NM 87102

SHIP TO

Chief Operations Office
6400 Uptown Blvd. NE 610E
Albuquerque, NM 87110

ATTENTION
OF

DATE	VENDOR NO.
6/10/2016	11667

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

ITEMS, TERMS & CONDITIONS

PRICE AGREEMENT

March 22, 2016 - March 21, 2017

Final

AMENDMENT 3

Legal Services

Per terms and conditions of RFP No. 13-025SS-AM and General Form of Contract

Plus New Mexico Gross Receipts Tax for Legal Services

Reason for Amendment: Renewal of contract for one (1) additional year

EMM
6/20/16

All original terms and conditions remain unchanged, except that the rates proposed under RFP 16-038RA-KM - Special Education Legal Services would apply should the law firm be selected under that RFP.

CONTACT: Elena M. Gallegos

TELEPHONE: (505) 243-6864 / **FAX:** (505) 843-9318

EMAIL: egallegos@wabsa.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

VENDOR AUTHORIZED SIGNATURE

Sandra Sanchez
Date *6/10/16*

EMM
Date *6/20/16*

ALBUQUERQUE PUBLIC SCHOOLS (APS) GENERAL TERMS AND CONDITIONS

1. INSPECTION. The materials, supplies or services furnished shall be exactly as specified in this order, free from defects in Seller's design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by APS at all times and places. If, prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, APS may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such defects within a time deemed reasonable by APS, APS may terminate the order in whole or in part. Seller shall bear all risks as to rejected materials, supplies and services and, in addition to any other costs for which Seller may become liable to APS under other provisions of this order, shall reimburse APS for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to, and do not limit, APS's rights provided in this Paragraph.

2. WARRANTIES. Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UGC warranties, express or implied are incorporated herein.

3. ASSIGNMENT. Neither the order nor any interest therein, nor claim thereunder shall be assigned or transferred by the Seller except as authorized in writing by APS. No assignment or transfer shall relieve the Seller from its obligations and liabilities.

4. CHANGES. APS may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of APS. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Seller from proceeding with performance of the order as changed hereunder.

5. LABOR DISPUTES. Seller shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this order.

6. TERMINATION AND DELAYS. APS may by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. APS shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by APS with respect to the undelivered or unaccepted portion of this order; provided compensation hereunder shall in no event exceed the total order price. Such amount will be limited to the Seller's actual cost and shall not include anticipated profits. APS may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the items or services or to perform the services within the time specified or any written extension thereof. In such event, APS may purchase or otherwise secure items or services and, except as otherwise provided herein, Seller shall be liable to APS for any excess costs occasioned APS thereby, including incidental and consequential damages.

If, after notice of termination for default, APS determines that the Seller was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of APS, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of APS, unless it shall be determined that the items or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.

If APS determines that Seller has been delayed in the work due to causes beyond the control and without the fault and negligence of the Seller, APS may extend the time for completion of the work called for by this order, when promptly applied for in writing by the Seller; and if such delay is due to failure of APS, not caused or contributed by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Paragraph. Sole remedy of Seller in event of delay by failure of APS to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of delay. No allowance will be made for anticipated profits.

The rights and remedies of APS provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. As used in this Paragraph, the word "Seller" includes Seller and its suppliers at any tier.

7. AFFIRMATIVE ACTION. Seller shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Seller agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy effectively to all persons concerned within Seller's company, with outside recruiting services and the minority community at large; to provide APS on request a breakdown of its labor force by ethnic group, sex, and job category; and to discuss with APS its policies and practices relating to its affirmative action program.

8. INDEMNIFICATION AND INSURANCE. Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performances of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of APS. Seller shall indemnify and hold harmless APS, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action.

Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order on premises occupied by or under the control of APS.

9. PATENT AND COPYRIGHT INDEMNITY. Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting therefrom.

10. DISCOUNTS. APS will take advantage of prompt payment discounts whenever possible; however these will not be used as a means to determine the low responsive and responsible bidder. Any discount period will not begin until the materials, supplies or services have been received and accepted and a correct invoice submitted for payment. If testing is required, discount period will not begin until such tests are satisfactorily completed.

11. CONTINGENCY FEES. Seller warrants that no person or selling agency has been employed or retained to solicit or secure this order upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona-fide employees or bona-fide established commercial or selling agencies maintained or utilized by Seller for the purpose of securing business. For violation or breach of this warranty, APS shall have the right to annul this order without liability or, at its discretion, to deduct from this order, price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

12. PENALTIES. The New Mexico Procurement Code (NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

13. TITLE AND DELIVERY. Title to the materials and supplies passed hereunder shall pass to APS at the F.O.B. point specified subject to the right of APS to reject upon inspection. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from APS's Purchasing Department. Order is subject to termination for failure to make timely delivery.

14. TAX STATUS. APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of tax on the purchase of tangible personal property. This certificate will be issued upon request. It is not valid for the purchase of services including construction, or materials that become part of a construction project or for the lease of property. Seller is responsible for payment of all applicable taxes, which will be added to invoice as a separate item at the current rate.

15. APPLICABLE LAWS. If this order is a subcontract under a U.S. Government Prime Contract, applicable clauses of the Federal Acquisition Regulations are incorporated herein by reference. Any provision required to be included in a contract of this type by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation also shall be deemed to be incorporated herein. Any contract or litigation resulting from acceptance of this purchase order will be construed according to the laws of the State of New Mexico unless otherwise stated.

**GENERAL FORM OF CONTRACT
RFP NO. 13-025SS-AM
LEGAL SERVICES**

THIS AGREEMENT is made and entered into this 22nd day of March, 2013, by and between the Albuquerque Public Schools, a New Mexico public school district, (hereinafter referred to as the "APS"), and Walsh, Anderson, Gallegos, Green & Trevino, P.C., (hereinafter referred to as the "Contractor"), whose address is 500 Marquette NW, Suite 1360, Albuquerque, NM 87102.

RECITALS:

WHEREAS, APS issued a Request for Proposals for Legal Services, RFP No. 13-025SS-AM, titled "Legal Services", dated November 2, 2012, and by this reference made a part of this Agreement; and

WHEREAS, the Contractor submitted its proposal, dated November 29, 2012, in response to RFP No. 13-025SS-AM, and by this reference made a part of this Agreement; and

WHEREAS, APS desires to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **Scope of Services:** The Contractor shall perform the following services (hereinafter the "Services") in a satisfactory and proper manner, as determined by APS:

Provide legal services, in accordance with RFP No. 13-025SS-AM.

- Evaluation, advise and/or opinion of legal matters either verbal and/or written for various department and schools;
- Act as counsel to the Board of Education and advise on various open-meeting matters;
- Participate and advise APS on employee, State Department of Education, State School Board, and department, and school and educational issues, and unrelated issues in a wide variety of areas;
- Appearances before legislative committees, lobbying or involvement with other legislative and intergovernmental relations may be required.
- Evaluation, advise, and recommendation of policies and procedures change(s) as needed;
- Provide other support services which will enhance communication access for Office for the Chief Operations Officer, various departments and/or schools.
- Provide a defense for litigation on lawsuits and other court related areas of concern brought against the Albuquerque Public Schools.

2. **Technical Specifications:** Work shall include a minimum of the activities set forth below:

2.1.1. The successful firms(s) must be available and prepared to be contacted daily on a significant number of unrelated issues in a wide variety of areas. APS is a demanding client. A prompt and timely response whether verbal or by written opinion is essential. Counsel will be expected to advise appropriate APS personnel as to potential problem areas, the impact of new legislation or any similar issue that may require attention.

In capacity as counsel to the Board of Education, the successful firm(s) will advise on various open-meeting matters. Public Board meetings are regularly scheduled on the first and third Wednesday of each month with other meetings held as necessary. Attendance may or may not be required. Such issues as the superintendent's contract negotiations, matters involving the State Department of Education and the State School Board are typical. Appearances before legislative committees, lobbying or involvement with other legislative and intergovernmental relations may also be required. It is preferred that at least one attorney within the firm be assigned as the primary contact. Other attorneys may be involved as back up or representing specific expertise as necessary, but at least one person will be the primary contact with overall knowledge of the status of all APS matters. In the event that multiple awards are made, it will be imperative that the various firms interface as necessary with no conflict of interest. In addition to school and/or educational issues, the following summary of administrative support functions is provided as general background information. The list is not represented as complete, but is intended to call out various operational aspects of the district organization.

Athletics: This department provides administrative, organizational and financial support for comprehensive high school and limited middle school athletic programs. It also provides specifications for approved athletic equipment meeting state and federal guidelines. Memberships in organizations such as NMAA have in the past become controversial.

Community Relations: This department is responsible for dealing with public requests for information such as subtenants or employee records. It also informs the public of district activities and policies via press releases, television and radio interviews, prepared statements, etc.

Employee Benefits: This department reports to Human Resources and is responsible for the administration of the group health, dental, vision, long term disability, 403(b) annuities, college savings plans and life insurance plans. Department also coordinates final retirement paperwork and sick leave bank.

Equal Opportunity Services Department: This department is responsible for practices that reflect equal job opportunity without regard for race, color, sex, sexual orientation, national origin, religion, age, and similar. Interaction with the Office of Civil Rights regarding student issues as well as the Equal Employment Opportunity Commission and/or State Human Rights Department for employee matters in common. This office also manages requests for accommodations under Section 504 and the Americans with Disabilities Act.

Facilities Master Plan: The administration of the Facilities Master Plan allows for facility improvements to be made on an equitable basis across the district. Long range planning includes interaction with other governmental agencies on issues relating to the capital program. Legal services are required in connection with election law, mil levy procedures, and general obligation

bonds. A separate inter-office mail service offers daily pickup and delivery at all APS locations. Printing services, operations of the District Imaging and Archive Center are also included.

Facilities Design and Construction: This department is responsible for all major capital improvements typically done through a design-bid-build process. General contractors participate together with numerous outside architectural and engineering firms. Internal staff includes architects, engineers, asbestos control, ADA and interior facility specialists, plus accounting functions and project management.

Finance: This area includes accounts payable/receivable, bond sales, building usage, capital outlay, external audits, fixed assets, grants, investments, payroll, and related functions. The APS annual budget is approximately \$1.2 billion from all sources. Proper expenditure of all funds is monitored with appropriate financial reporting. Board of Education elections are also included.

Food Services: APS operates the largest food service organization in New Mexico. Together 40,000 lunches are served daily. Food Services also contracts with outside entities such as Bernalillo County Parks and Recreation and parochial schools for various lunch programs. Approximately half of the annual budget is derived from federal funds. Worker are represented by the Communications Workers of America (CWA) union.

Human Resources: This department is responsible for the recruitment, hiring, assignment and pertinent records of all APS employees as well as overseeing various other departments. Labor Relations is responsible for bargaining and administering negotiated agreements with union contracts represent cafeteria, clerical, maintenance workers, police, and teaches and educational assistants. The Compensation Unit develops job evaluations systems, conducts job audits and maintains job descriptions. See also Employee Benefits for additional discussion.

Internal Audit: This is an independent department reporting directly to the Superintendent and/or designee and the Board of Education on district financial conditions, legal and procedural compliance and internal controls.

KANW FM Radio and KNME-TV Channel 5: The radio station provides instructional and regular programming in the general Albuquerque area. The school district operates KNME public television jointly with the University of New Mexico.

Maintenance and Operations: The district physical plant provides maintenance/repair for facilities plus related grounds and equipment as well as portable building moves, small facility renovation, custodial services, telephone systems and fleet maintenance. Various crafts are represented e.g., electrical, plumbing, roofing, masonry, painting, etc.

Materials Management: This department warehouse commonly used items and provides scheduled delivery of the same.

Police: The APS police personnel are certified and commissioned officers providing law enforcement services for the district. This includes campus safety measures, burglary and vandalism reports as well as employee investigations involving criminal or other misconduct.

Procurement: This department has sole authority for the purchase, rent, or lease of tangible personal property, services and construction for the district. APS is bound by the New Mexico Public Purchases Act as well as various federal statutes, rules and rules and regulations. Contracts, bids, protest actions, tax issues, Subcontractors Fair Practices Act are common issues.

Real Estate: This department handles various property transactions including land purchases, dispositions, appraisals, condemnations procedures, leases, licenses, joint-use agreements, easements and portable building assignments.

Research, Development and Accountability: School accountability is supported in the interpreting of assessment data and the application of this information to improve instruction. Classroom, formative and summative assessments are developed. Evaluation and original research is conducted in support of instructional programs.

Risk Management: This department manages the district liability and property insurance programs. It also oversees an occupational health clinic (current contract is with Concentra) and workers' compensation programs in addition to loss control and safety services.

Special Education: The primary function is to provide support and technical assistance to schools regarding special education students and programs including district responses to legal, regulatory and budgetary matters. The department contracts with outside psychologists, psychiatrists, therapists, etc. in addition to district staff. Common issues are due process hearings, court actions and federal and state mandates for these students.

Technology Services: This department maintains and supports all district technology including administrative student information, finance and payroll systems, computers, multi-media items, software, instructional support, networks, internet, and satellite systems.

Transportation: This department is responsible for transporting 44,000 students to and from school on a daily basis. School buses are privately contracted and not owned by APS; However, APS is responsible for providing auto liability insurance for school bus contractors.

The following information is provided to establish district expectations insofar as relationships with legal counsel.

2.1.2 Unless otherwise agreed. All fees and costs will be billed at the contract rate. Invoices will state with particularity the legal work performed, the hours expended and costs incurred. Only one department will be billed for the service. Attorneys submitting invoices for payment must initial the itemized statement and will be responsible for the content and to resolve any problems.

Each legal activity will be dated and itemized. Multiple daily descriptive explanations with a single time entry e.g., block entries, are not acceptable. The amount of time to complete the task must be broken down into tenths of hours. Billing for paralegal and other staff members will be handled in the same manner.

At time of initial contact by an authorized agent of APS, one attorney will be assigned and mutually agreed upon. There will be no charge for the referral to the recommended attorney. The firm represents that this individual possesses sufficient experience and expertise to successfully bring the matter to timely conclusion. Without specific prior written approval, APS will not pay for the cost of two or more attorneys to attend depositions, hearings, settlement conferences or any other activity. In-house consultations, meetings, interoffice conferences, etc. between attorneys may also occur at the discretion of the lead attorney, but will not be paid by APS.

APS will not separately pay for such costs including but not limited to office supplies, computer hardware or software, group outings/hospitality, travel, sending or receiving faxes, file creation or organization, indexing/summarization of dispositions, clerical functions or staff time, courier or express package delivery. Markups for Lexis, Westlaw or other computer assisted research and telephone charges will not be reimbursed above actual cost.

2.1.3 Litigation Management: During the course of any particular case, Counsel shall be selected by APS based upon but not limited to the following criteria, none of which are necessarily given greater or lesser.

- The nature and complexity of the case
- The experience and ability of the attorney
- Any preference expressed by the school or department
- Venue, including the judge assigned and any prior experience
- Jurisdiction
- Economy of services to be provided
- Any potential conflict of interest for the attorney or firm assigned
- Prior handling of other files on behalf of APS

2.1.4 Case, Analysis, Strategy and Budget:

Within thirty (30) days following receipt of a case, counsel shall prepare a comprehensive initial report for APS and/or its designated representative to contain a comprehensive written analysis. This analysis shall provide the initial evaluation of the case, including a brief synopsis of the facts to include any exposure in the case, identification of strengths and weaknesses, damages, plaintiff's injuries and similar. Counsel shall also provide an initial impression of liability and identify the pertinent statutes and the case law expected to affect the outcome of the litigation including any precedent setting issue.

Counsel shall identify any additional information or documentation needed to disprove the plaintiff's claims or to establish defense. Depending upon the nature of the case, such information gathering shall be done by the APS' Staff and/or their designated claim representative whenever possible. Counsel shall identify the anticipated course of action and the prospect for success including the timing of discovery, filing of motions, negotiations or other objections. APS must be cognizant of the facts or elements that must be proven or disproved and the advantage to be gained by use of such tactics.

Counsel will provide an estimate of the anticipated cost of each significant aspect of the litigation including pleading, discovery, pre-trial conferences, arbitration, trial and/or other identified stage. This will also include a breakdown of fees and expenses reasonably or customarily expected to be incurred, the number of hours expected to be expended together with the hourly contract rates for each partner, associate or paralegal assigned.

APS or its designated representatives will be consulted prior to the engagement of any expert witness or authority. Reimbursement for fees and costs of such experts is subject to APS prior approval. Information concerning the expert(s) to be retained will include the name of the expert(s), the area of expertise, proof of credentials or expertise and rationale for selection. Fee schedule or hourly rates will be provided.

Depositions and hearings will be scheduled to permit the attendance of an APS designee or its representative as appropriate. APS or its legal representative will be consulted with and approvals obtained prior to filing of any appeals, cross or counterclaim, joinder of other parties, commencement or settlement negotiations stipulations to liability, waiver or jury trial or bifurcation of a case for trial. Monthly or quarterly meeting will be held with the assigned law firm for the purpose of reviewing and updating all pending legal actions.

The estimate of trial expenses must be realistic so as to allow the school district to provide for anticipated expenses, accurately evaluate settlement offers and to avoid incurring excessive defense costs.

Counsel shall promptly provide copies of all correspondence and pleadings to APS or its designated representatives and will keep APS fully advised of the progress in each case. Evaluations will be prepared as deemed necessary to disclose any changes in applicable statutes or case law, increase or decrease in costs and the potential liability and settlement value of the case. Within ninety (90) days following the termination of each lawsuit or other course of action such as arbitration or mediation, APS will review each file to determine compliance within these guidelines, strategy and budget development of the case. If appropriate, a meeting will be arranged to discuss perceived problems and/or ways to improve the defense of APS claims.

Counsel shall not settle any lawsuit or make any settlement offer in any amount without prior authorization of APS. All settlement offers will be communicated to APS whether the offers are verbal or written.

At the conclusion of all trials or legal action of consequence, a brief summary trial report shall be directed to APS outlining the trial results as well as any appellate activity that might be anticipated from the plaintiff or considered advisable on the part of APS. Original closing papers and final billing should be attached.

3. Time of Performance: Services of the Contractor shall commence on the date of final execution of this Agreement and shall be performed throughout the term of the Agreement until March 21, 2014, and thereafter during any renewal period.

4. **Compensation and Method of Payment:** Each installment is to be paid within forty five (45) days of receipt of an invoice from Contractor in which Contractor will state that all services required by this contract have been performed or are timely being performed, subject to the provision of Part 4.1.5.

4.1.1. **Attorneys Compensation:** For performing the services specified herein, the Contractor shall be compensated at a fixed firm fee of:

Item	Required Number of Years (Experience)	Hourly Rate
1.	0 to 4.99 years (see attached list)	\$120.00
2.	5 to 9.99 year (see attached list)	\$140.00
3.	10 + year (see attached list)	\$160.00

4.1.2. The hourly rate for law school graduates awaiting New Mexico Attorney Licensure will be \$85.00 an hour.

4.1.3. **Disbursements:**

Local travel will not be reimbursed. Out of town travel will be reimbursed at the rate reimbursed to APS employees for travel.

APS will not reimburse Contractor for courier services and postage.

Photocopies will be billed at \$0.10 cents per page. APS reserves the right to duplicate large documents on a case by case basis at its own facility.

Long distance telefax will be billed at actual cost.

Other costs not mentioned in the agreement will be usual and customary or otherwise negotiated by APS Procurement Department and the law firm.

4.1.4. **Subscription:** Walsh, Anderson, Gallegos, Green & Trevino, P.C. provides a subscription to the publication School Law with Walsh Anderson New Mexico, dealing with the special education law and general school law issues, published by the law firm six time per year. The Law Firm's training materials, products and newsletters are copyrighted. APS shall have permission to reproduce these materials for internal use. *EMK*

4.1.5. **Periodic E-Mail:** Walsh, Anderson, Gallegos, Green & Trevino, P.C. provides periodic e-mail updates that will keep APS representatives informed of current developments in school law.

4.1.6. **Preventative Training:** Training sessions conducted by all attorneys are charged at a rate of \$2,000.00 per attorney for a full day, plus expenses (negotiated and approved by APS) and gross receipts tax at current rate.

The Law Firm's training materials, products and newsletters are copyrighted. APS shall have permission to reproduce these materials for internal use. *EMK*

Training topics regularly include: Special Education, Employee Dismissal, Grievance Procedures, Employee Disability Law, Employee Appraisals, Student Discipline, Employee Discipline, Governance, Documentation, Open Meetings and Public Information, Student Activity and Organization Issues, Student and Employee Religious First Amendment Rights and Other Constitutional Rights, School Construction, Bidding and Board Operating Procedures, Sexual Harassment and Whistle-blower Complaints, and Student Records.

4.1.7. **Method of Payment:** Such amount shall be paid to the Contractor upon receipt by APS of a properly documented invoice(s) for monthly payment as determined by the budgetary and fiscal guidelines of APS and on the condition that the Contractor has accomplished the scope of services outlined herein, to the satisfaction of APS.

4.1.8. **Appropriations:** Notwithstanding any other provisions in this Agreement, the terms of this Agreement are contingent upon the appropriation of funds necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by, this Agreement may be terminated at the end of APS' then current fiscal year upon written notice given by APS to the Contractor. Such event shall not constitute an event of default. All payment obligations of APS and of its interest in this Agreement will cease upon the date of termination. APS' decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. **Independent Contractor:** Neither the Contractor nor its employees are considered to be employees of APS for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the services. The Contractor further agrees that neither it nor its employees are entitled to any benefits from APS under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of APS.

6. **Personnel:**

6.1.1. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with APS.

6.1.2. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

6.1.3. The Contractor shall designate a local, primary contact person(s) to act on its behalf and to coordinate activities with APS. The contact person will not be changed without the approval of APS.

6.1.4. None of the work or Services covered by this Agreement shall be subcontracted without the prior written approval of APS. Any work or Services subcontracted hereunder shall be

specified by written contract or agreement and shall be subject to each provision of this Agreement.

7. **Indemnity:** The Contractor agrees to defend, indemnify, and hold harmless APS and their officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against said parties for or on account of any matter arising from the services performed by the Contractor under this Agreement. Such indemnification does not extend to the underlying claim administered by Contractor, except to the extent such claim is aggravated as a result of any claims administration by Contractor. The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

8. **Insurance:** The Contractor shall not commence any work under this Agreement until the insurance required in RFP No. 13-025SS-AM has been obtained and the proper certificates (or policies) have been submitted to APS.

9. **Discrimination Prohibited:** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability, as defined in the Americans with Disabilities Act of 1990, as currently enacted or hereafter amended.

10. **ADA Compliance:** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans with Disabilities Act of 1990 (the "ADA"), which are imposed directly on the contractor or which would be imposed on APS as a public entity. The Contractor agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless APS, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

11. **Reports and Information:** At such times and in such forms as APS may require, there shall be furnished to APS such statements, records, reports, data and information, as APS may request pertaining to matters covered by this Agreement. Unless authorized by APS, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to APS.

12. **Establishment and Maintenance of Records:** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by APS with respect to all matters covered by this Agreement. Except as otherwise authorized by APS, such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement. Before destroying or otherwise disposing of any such records, Contractor shall offer the records to APS. No records shall be destroyed without giving APS at least thirty (30) days written notice of Contractor's intention to destroy or otherwise dispose of records.

13. **Audits and Inspections:** At any time during normal business hours and as often as APS may deem necessary, there shall be made available to APS for examination all of the

Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit APS to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, subcontracts (if properly authorized by APS), materials, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor may be required to provide such information and records and appear as a witness in hearings associated with any audit or inspection.

14. **Publication, Reproduction and Use of Material:** Except for materials described in 4.1.4 & 4.1.6, no material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country.

APS shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

15. **Compliance with Laws:** In providing the Scope of Services outlined herein, the Contractor shall comply with all applicable laws, ordinances, and codes of the Federal, State, and local governments.

16. **Changes:** APS may, from time to time, request changes in the Scope of Services of the Contractor to be performed hereunder, as may be permitted by applicable law and regulation. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between APS and the Contractor, shall be incorporated in written amendments to this Agreement.

17. **Assignability:** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of APS thereto.

18. **Termination for Cause:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligation under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, APS shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, and reports prepared by the Contractor under this Agreement shall, at the option of APS, become the property of APS, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to APS for damages sustained by APS by virtue of any breach of this Agreement by the Contractor, and APS may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due APS from the Contractor is determined.

19. **Termination for Convenience by APS:** APS may terminate this Agreement at any time giving at least fifteen (15) days notice in writing to the Contractor. If the Contractor is terminated by APS as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services

of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

20. Construction and Severability: If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

21. Enforcement: The Contractor agrees to pay to APS all costs and expenses including reasonable attorney's fees incurred by APS in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

22. Entire Agreement: This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

23. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and any applicable rules and regulations of APS.

24. Approval Required: This Agreement shall not become effective or binding until approved and signed by the Executive Director of Procurement.

IN WITNESS WHEREOF, APS and the Contractor have executed this Agreement as of the date first above written.

ALBUQUERQUE PUBLIC SCHOOLS

Brad Winters 5/1/13
Chief Operating Officer (Date)

Sandra Sanchez 3/3/13
Procurement Manager (Date)

W. A. J. 5/6/13
Executive Director of Procurement (Date)

CONTRACTOR

By: [Signature]
Title: Director/Shareholder

Date: 3/25/2013

