



**ALBUQUERQUE
PUBLIC SCHOOLS**

PRICE AGREEMENT NO. 14677
AMENDMENT NO. 1

ALBUQUERQUE PUBLIC SCHOOLS - PROCUREMENT DIVISION
PO BOX 25704
ALBUQUERQUE, NEW MEXICO 87125
PHONE (505) 881-8415
FAX (505) 830-1161

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Huitt-Zollars, Inc.
6501 Americas Parkway NE Suite 500
Albuquerque, NM 87110

SHIP TO

Facilities Design & Construction
915 Oak St. NE
Albuquerque, NM 87123

ATTENTION
OF

Karen Alarid

DATE	VENDOR CODE
9/5/2017	11215

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.

PLEASE SHOW PRICE AGREEMENT NUMBER ON ALL INVOICES, SHIPPING PAPERS, PACKAGES, CORRESPONDENCE, ETC. INVOICE IN DUPLICATE.

ITEMS, TERMS, & CONDITIONS

PRICE AGREEMENT

Qualifications-Based Architectural Services for Multiple Projects

Contract Term: February 15, 2017 - February 14, 2021

Per terms and conditions of: 17-056MM-KV

Board Approved: 2/15/2017

Pricing Attached

SERVICES AND/OR GOODS TO BE PROVIDED: The Contractor shall provide the good(s) and/or service(s), as defined in this agreement, on an "as ordered" basis. This is not an order and no funds are obligated under this Pricing Agreement. Funds are obligated by approved purchase orders on an "as needed" basis. Contractor shall receive separate individual Purchase Orders for each individual requests.

MINIMUM AMOUNT: Albuquerque Public Schools does not guarantee a minimum amount of purchases in conjunction with this pricing agreement.

QUOTES AND PAYMENT: The Contractor shall include the APS Pricing Agreement Number on each quote and reflect the price as awarded. The invoice submitted for payment shall match the quote and shall note the purchase order number.

PRICING ESCALATION: Price escalation will be considered only at yearly observance of award and only upon receipt of written request from contractor stating reason for escalation and the amount being requested. Justifying documentation must accompany price escalation request.

Amendments: This Pricing Agreement shall not be altered, changed, or amended except by written agreement signed by both parties.

Reason for Amendment: Contractual

Contact: Kim R. Kemper

Phone: 505-883-8114

Email: krkemper@huitt-zollars.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE


Date 9/6/17

VENDOR AUTHORIZED SIGNATURE


Date 9-6-17

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 UCC 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 sub 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 performance 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.

ASSET SALE AND PURCHASE AGREEMENT

THIS ASSET SALE AND PURCHASE AGREEMENT (the “**Agreement**”) is made effective as of March 13, 2017 (the “**Effective Date**”), by and among **Huitt-Zollars, Inc.**, a Texas corporation (“**Purchaser**”), **JMZ Arquitectos, LLC**, a New Mexico limited liability company (“**Seller**”) and Jose Zelaya (the “**New Employee**”).

RECITALS

WHEREAS, the New Employee owns 100% of the membership interests of Seller, which operates an architectural services business in Albuquerque, New Mexico (the “**Business**”); and

WHEREAS, there are certain assets utilized by Seller in the operation of the Business that Purchaser desires to purchase, which are more particularly described in Section 1.1 below (the “**Assets**”);

WHEREAS, the parties mutually desire that Seller shall assign and sell to Purchaser the Assets and Purchaser shall employ the New Employee;

NOW, THEREFORE, in consideration of the mutual provisions, representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1 PURCHASE OF ASSETS

1.1 **Purchase of Assets.** Subject to the terms and conditions of this Agreement, Seller agrees on the Closing Date (as hereinafter defined) to assign, sell, transfer, convey and deliver to Purchaser, and Purchaser agrees on the Closing Date to purchase from Seller, the Assets. The Assets consist of the items described on Exhibit A attached hereto.

1.2 **Excluded Assets.** Notwithstanding anything herein to the contrary, the Assets do not include, Purchaser does not purchase, and Seller does not sell, any asset of Seller which is not set forth in Exhibit A, including but not limited to the following assets (the “**Excluded Assets**”):

(a) Seller’s minute books, seals, stock books, charter documents and other corporate books and records as pertain to the existence and organization of Seller;

(b) All cash and cash equivalents of Seller, and accounts receivable and work in progress to be invoiced for services provided by Seller;

(c) All documents, records, memoranda, communications, or other materials, whether tangible or intangible, relating to the Business or prior work conducted or performed by Seller, including designs, drawings and similar materials;

(d) All artwork, white papers, lectures, talks, published materials, published books and copyrights of same;

(e) Any claims or causes of action owned by Seller, whether known or unknown;

(f) The rights of Seller under any current contract between Seller and any customer, prime contractor, subcontractor, insurer, or other third party.

1.3 **Liabilities.** Purchaser is not assuming any debts, liabilities or obligations of Seller including, without limitation, liabilities or obligations arising out of or relating to (i) violations of laws, (ii) obligations owed to employees, (iii) income, sales or other tax liabilities, (iv) any other third party claims or causes of action relating or attributable to any actions of Seller or its members and employees prior the Closing Date, or (v) any contractual obligations of Seller (collectively, the "Seller Liabilities"), and all Seller Liabilities shall be and remain the responsibility of Seller. The Seller and New Employee shall jointly and severally defend and indemnify Purchaser from and against any and all claims, legal actions and other obligations related to the Seller Liabilities.

1.4 **Brokerage Commission.** No brokerage commissions are due in connection with this transaction and each party shall defend and indemnify the other from and against any claim for brokerage commissions, finder's fees or any similar claim of any third party resulting from the actions of such party.

ARTICLE 2 PURCHASE PRICE AND PAYMENT

2.1 **Purchase Price.** "Purchase Price") which shall be payable via check at Closing.

2.2 **Prorations.** There will be no other prorations in this transaction.

2.3 **Allocation of Purchase Price for Assets.** Seller and Purchaser agree that the Purchase Price for the Assets, subject to the adjustments described herein, shall be allocated among classes established by the Internal Revenue Code and applicable federal regulations as follows:

- (a) Equipment - Class V Assets
- (b) Class VI Assets
- (c) Class VII Assets

The parties agree to report the transaction described in this Agreement in accordance with the above allocation on all federal and state tax returns and execute IRS Form 8594 confirming such allocation.

2.4 **New Employee's Right to Repurchase.** If New Employee's employment by Purchaser is terminated by Purchaser for any reason within 90 days of Closing, New Employee shall have the right to repurchase the Assets, described on Exhibit A, excepting the Task Orders,

ARTICLE 3 OTHER MATTERS

3.1 **Employment Matters.** Purchaser will not assume any obligations related to Seller's current or former employees. As a condition to the Closing (as defined below), Purchaser shall employ the New Employee pursuant to the offer letter attached as Exhibit E (the "Offer Letter").

3.2 **Customer Prospects and Customer Contracts.**

(a) **Seller Customer Prospects.** Seller has submitted certain proposals for work which are awaiting award and listed on Exhibit B attached hereto (collectively, "Pending Proposals"). Upon any notice of award with respect to a Pending Proposal, Seller will notify the prospective customer that the work will be performed by Purchaser and allow the customer the right to accept or decline the award of the contract to Purchaser. Seller and the New Employee shall not pursue any additional work on behalf of Seller after Closing other than the Pending Proposals.

(b) **Seller Customer Contracts.** Seller and New Employee will remain solely responsible for the completion and performance of all obligations of the Seller under the contracts described on Exhibit C attached hereto (the "Seller Contracts"). Following the Closing, all work performed by the New Employee on anything other than the Seller Contracts will be on behalf and for the benefit of the Purchaser. The Purchaser will permit the New Employee to complete any remaining work on the Seller Contracts on behalf of Seller, but the New Employee shall not: (1) use Purchaser computers, software, e-mail or stationary, or (2) otherwise give any customer or contractor of Seller the belief that Purchaser has assumed any obligations of Seller under the Seller Contracts. Seller and New Employee shall notify each of the clients for whom work is being performed under the Seller Contracts that New Employee is an employee of Purchaser but that New Employee's work on the Seller Contracts is being performed by New Employee individually and not as an employee of Purchaser; and that Purchaser has not assumed any of Seller's and New Employee's obligations under the Seller Contracts. Seller and New Employee shall complete the work on the Seller Contracts as soon as practical.

3.3 **Post-Closing Change of Name; Name License.** Within 30 days following the Closing Date, the New Employee shall change the name of Seller to a name substantially different from JMZ Arquitectos, LLC. Concurrent with such change of name, Purchaser shall be deemed to have licensed back the name "JMZ Arquitectos" to Seller for Seller to use as an assumed name in connection with the completion of all work and the receipt of all payments related to the Seller Contracts (the "Name Use Termination Date"). The above license shall automatically terminate on the Name Use Termination Date. Seller shall notify Purchaser in writing when it has completed all work and received all payments under the Seller Contracts.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLER AND NEW
EMPLOYEES

Seller and the New Employee, jointly and severally, make the following representations and warranties to Purchaser as of the Closing Date, which shall survive this Agreement, Closing, the conveyance of the Assets and any investigation by any party:

4.1 **Corporate**. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Mexico. Seller has all requisite power and authority to enter into this Agreement and the other documents and instruments to be executed and delivered by Seller pursuant hereto and to carry out the transactions contemplated hereby.

4.2 **Authority**. The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by Seller pursuant hereto and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the members of Seller. No other or further corporate act or proceeding on the part of Seller is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by Seller pursuant hereto or the consummation of the transactions contemplated hereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Seller pursuant hereto will constitute, valid and binding agreements of Seller, enforceable in accordance with their respective terms.

4.3 **No Violation**. Neither the execution and delivery of this Agreement or the other documents and instruments to be executed and delivered by Seller or the New Employee pursuant hereto, nor the consummation by Seller or the New Employee of the transactions contemplated hereby and thereby (a) will violate any statute or law or any rule, regulation, order, writ, injunction or decree of any court or governmental authority, (b) will require any authorization, consent, approval, exemption or other action by or notice to any court, administrative or governmental agency, instrumentality, commission, authority, board or body, or (c) will violate or conflict with, or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or will result in the termination of, or accelerate the performance required by, or result in the creation of any lien, security interest, charge or encumbrance upon any of the assets of Seller or the New Employee under, any term or provision of any material contract, commitment, understanding, arrangement, agreement or restriction of any kind or character to which Seller or New Employee is a party or by which Seller or New Employee or any of the material assets or properties of Seller may be bound or affected.

4.4 **Title to the Purchased Assets**. Seller has and Purchaser will receive upon the effective date of conveyance, good title to all of the Assets, free and clear of all known interests, including but not limited to mortgages, liens, security interests, or encumbrances of any nature.

4.5 **Pending Proposals; Customer Contracts.** There are no outstanding bids or proposals for work by Seller other than the Pending Proposals. There are no outstanding contracts or other commitments to perform work by Seller other than the Seller Contracts. Seller has delivered to Purchaser true and complete copies of the Seller Contracts (including all amendments and modifications thereto). To the best of Seller's knowledge, Seller is not in default (and no event has occurred that, after notice or lapse of time, or both, would constitute a default) under any of the Seller Contracts.

4.6 **Taxes.** All ad valorem/property taxes relating to the Assets have been fully paid for all tax years ending before 2017 and there are no delinquent property tax liens or assessments.

4.7 **Litigation and Claims; Compliance with Laws.** There is no pending or threatened litigation and there are no pending or threatened claims against Seller or the New Employee. Seller has not received any written or verbal notice of any violation of any laws applicable to the operation of the Business or with respect to the Assets.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby makes the following representations and warranties as of the date hereof and as of the Closing Date, each of which is relied upon by Seller and the New Employee regardless of any investigation made or information obtained by Seller or the New Employee:

5.1 **Due Authorization.** Purchaser is a corporation validly existing under the laws of the State of Texas and is qualified to transact business in the State of Texas and New Mexico. This Agreement and all other agreements, instruments, certificates, and documents executed and delivered by or on behalf of Purchaser are the valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject as to enforcement only to applicable bankruptcy, insolvency, reorganization, or other laws affecting the rights of creditors generally, to general equitable principles (whether considered in an action at law or in equity).

5.2 **Compliance with Laws.** Purchaser represents and warrants that the transactions contemplated by this Agreement shall not violate any applicable law, regulation or ordinance.

All representations and warranties of Purchaser shall survive the execution of this Agreement, Closing, the conveyance of the Assets and any investigation by any party.

ARTICLE 6 CLOSING

6.1 **Closing.** Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall be held at the offices of Purchaser on the Effective Date (the "Closing Date").

6.2 **Documents and Items to be Delivered by Seller.** Seller agrees to deliver the following documents and items, duly executed as appropriate, to Purchaser at the Closing:

- (a) A Bill of Sale for the assignment and transfer of the Assets, in the form attached hereto as Exhibit D;
- (b) Releases of all UCC-1 filings, if any, on the Assets;
- (c) A written acceptance of the Offer Letter; and
- (d) Such other agreements, documents, certificates and instruments as Purchaser may reasonably request as being necessary in order to effectuate the transactions contemplated by this Agreement.

6.3 **Documents to be Delivered by Purchaser.** Purchaser agrees to deliver the following documents or items, duly executed as appropriate, to Seller at the Closing:

- (a) Payment to Seller of the Purchase Price; and
- (b) Such other agreements, documents, certificates, and instruments as Seller reasonably may request in order to effectuate the transactions contemplated under this Agreement.

ARTICLE 7 SALES EXPENSES

7.1 **Seller's Expenses:** Seller will pay for the following:

- (a) Releases of existing security interests in the Assets; and
- (b) All legal costs and other expenses incurred by Seller in connection with this transaction.

7.2 **Purchaser's Expenses:** Purchaser will pay for the following:

- (a) All legal costs and other expenses incurred by Purchaser related to this transaction.

ARTICLE 8 GENERAL

8.1 **Counterparts.** This Agreement may be executed in counterparts and by different parties on different counterparts with the same effect as if the signatures thereto were on the same instrument. This Agreement may also be executed by facsimile signatures, which shall be deemed original signatures for purposes of execution of this Agreement.

8.2 **Exhibits.** Each Exhibit delivered pursuant to the terms of this Agreement shall be in writing and shall constitute a part of this Agreement.

8.3 **Notices.** Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given, when received, if delivered by hand, telegram, telex or telecopy, and, when deposited, if placed in the mails for delivery by certified mail, return receipt requested, postage prepaid, addressed to the appropriate party at its address stated below.

8.4 **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

8.5 **Entire Agreement.** This Agreement, together with the schedules, exhibits and the related written agreements specifically referred to herein, represents the only agreement among the parties concerning the subject matter hereof and supersedes all prior agreements whether written or oral, relating thereto.

8.6 **Modification and Waiver.** No purported amendment, modification or waiver of any provision hereof shall be binding unless set forth in a written document signed by all parties (in the case of amendments or modifications) or by the party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.

8.7 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without regard to conflict of laws principles. Exclusive jurisdiction and venue for any dispute hereunder shall lie in Dallas County, Texas.

8.8 **Publicity.** No party will make any public announcement or issue any press release, or disclose to any other person (other than financial, accounting and legal representatives of the parties hereto), any information exchanged between or discussions among the parties regarding this transaction or the subject matter hereof without the prior consent of both Seller and Purchaser, unless otherwise required by law.

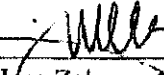
8.9 **Limitation of Liability.** Seller and New Employee's liability for breach of this agreement shall be limited to the amount of the Purchase Price.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed to be effective as of the day and year first above written.

[Signature Page Follows]

SELLER:

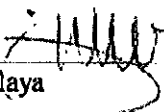
JMZ Arquitectos, LLC

By:  3.10.2017
Name: Jose Zelaya
Title: PRINCIPAL

Address:


6100 Seagull St. NE
Albuquerque, NM 87109

NEW EMPLOYEE:

 3.10.2017
Jose Zelaya

PURCHASER:

Huitt/Zellers Inc.

By: 
Name: CLIFF WALL
Title: CFO, SENIOR V.P.

Address:

1717 McKinney Avenue
Suite 1400
Dallas, Texas 75202



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JMZ Arquitectors, LLC
6100 Seagull St. NE Suite 203
Albuquerque, NM 87109

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Karen Alarid

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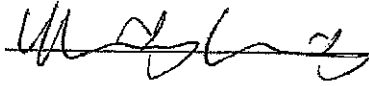
Reason for Amendment:

Contact: Jose M. Zelaya

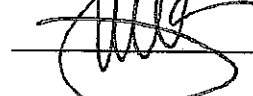
Phone: (505) 508-8512

Email: jzelaya@jnzarchitecture.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE


Date: 2/22/17

VENDOR AUTHORIZED SIGNATURE


Date: 2/8/2017

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 UCC 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 sub 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.

Agreement between the Albuquerque Public Schools and the Design Professional

Received by APS-FD&C

FEB 23 2017

Part A of two parts

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION

Project (short title): Open-End Contract Short Title	Contract No. RFP No.
Location: City/Town, State	APS Project No. TBD



Distribution to:

- District-Representative (original)
- Design Professional (original)
- Other _____

ALBUQUERQUE PUBLIC SCHOOLS

This Agreement entered into this February day of 16th, 2017,
by and between

ALBUQUERQUE PUBLIC SCHOOLS
915 OAK STREET SE
ALBUQUERQUE, NM 87106
Telephone: (505) 848-8810
Fax: (505) 246-9020

JMZ Arquitectos, LLC
6100 Seagull St NE
Suite 203
Albuquerque, NM, 87109
Telephone: 505 239 4457
Fax: N/A
Federal ID: 45-5593761
CRS Number: 03-354584-00-7
hereinafter "Design Professional."

hereinafter "Owner"; and

OTHER:

Professional and technical services shall be provided by the Design Professional, through the Project Design Professional, Open-End Contract, whose New Mexico Design Professional's seal and certificate number is NM 004370. The Owner's Representative shall be the District Representative and is Karen Alarid, Director of APS Facilities Design & Construction.

PROJECT DESCRIPTION:

Open-end Contract-this shall be an open-end contract for the design and construction administration of miscellaneous projects with fees not to exceed \$150,000.00 (nic NMGRT) per project. Contract as awarded is for a one-year period with three possible one-year extensions. *(be specific as to whether project does or does not include fixtures, furnishings and equipment in the MACC)*



Agreement between the Albuquerque Public Schools and
the Design Professional
Form APS 2008-DP

PAYMENT SCHEDULE

PART A OF AGREEMENT, PAGE 2 OF 5

ALLOWABLE FEES:

Base Fee (n.i.c. GRT)	\$
Total Reimbursable Not to Exceed Allowance (n.i.c. GRT)	\$
Total Basic Compensation	\$
Plus all applicable gross receipts taxes @ % (added @ billing)	\$
Total Contract Sum	\$

Programming Phase 10%	\$
Schematic Design Phase 15%	\$
Design Development Phase 20%	\$
Construction Documents Phase 25%	\$
Bidding or Negotiation Phase 3%	\$
Construction Phase 22%	\$
Close-Out, Final and Acceptance 3%	\$
Correction Period 11-Month Inspection 2%	\$
TOTAL Fixed Compensation (n.i.c. GRT) (100%)	\$

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES:

1. Owner, Partner, Principal-in-Charge per Hour
 Services rendered in capacity as officer of corporation or business including contract negotiations, senior project management, public presentations, change order authorization, design review, etc. \$85.00

2. Project Architect, Project Engineer per Hour
 Services rendered in supervising and reviewing with staff and consultants, project design, etc. \$60.00

3. Staff Architect, Staff Engineer (registered) per Hour
 Services include design, production, cost estimating, project administration, consultant coordination, etc. \$47.50

4. Intern Architect, E.I.T., Construction Administrator per Hour
 Services include site observation, change order preparation, field reports, submittal review, record drawings, CAD operator, drafter, etc. \$42.50

5. Clerical per Hour \$25.00
 Services include typing, word processing, meeting minutes, etc.



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CONDITIONS OR SERVICES

PART A OF AGREEMENT, PAGE 3 OF 5

GENERAL CONDITIONS TO THE AGREEMENT BETWEEN ALBUQUERQUE PUBLIC SCHOOLS AND DESIGN PROFESSIONAL, PART B TO THIS AGREEMENT, IS FULLY AND INSEPARABLY A PART OF THIS AGREEMENT

OTHER CONDITIONS OR SERVICES

1. **Civil Engineering.** Basic Services shall include civil engineering. Revise paragraph 2.0.1.1 of General Conditions of the Agreement between the Owner and the Design Professional, Part B, to delete the words "extensive civil engineering, or".
2. **National CADD Standards:** As part of Basic Services, the construction drawings for the project shall be produced in accordance with version 3.1 of the U.S. National CAD Standard. Upon completion of the project, the Architect shall provide the Owner with the record construction drawings in the form of CAD files that are formatted in accordance with version 3.1 of the U.S. National CAD Standard.
3. **Review and Approval Role of Public School Facilities Authority (PSFA):** Prior to advertisement to bid, this project shall be first authorized by a Public School Facilities Authority (PSFA) Approval of School Construction (ASC) per Section 22-20-1 NMSA 1978, unless such approval is waived by PSFA. If PSFA approval is not waived, the requirements related to the PSFA ASC review and approval process shall remain in force, as described in Exhibit G.
4. **Furnishings.** *(If not used, please indicate N/A)* (If furnishings are in MACC, then expectation for services must be included here)
5. **Reimbursables.** *(If not used, please indicate N/A)* (the Cost of Travel must be included in Reimbursable Not to Exceed Allowance with a summary breakdown of expectation included here or as separate attachment)
6. **Travel.** *(Generally only if project over 100 miles away and if agreed upon. If not used, please indicate N/A)*
7. **Life Cycle Cost Analysis.** *(If not used, please indicate N/A. If used, include a complete description of expected services)*
8. **Balancing and Testing.** *(If not used, please indicate N/A. If used, include a complete description of expected services)*
9. **Commissioning.** *(If not used, please indicate N/A. If used, include a complete description of expected services)*
10. **Value Engineering.** *(If not used, please indicate N/A. If used, include a complete description of expected services)*
11. **LEED Certification.** *(If not used, please indicate N/A. If used, include a complete description of expected services)*
12. **Liquidated Damages:** Liquidated Damages, where called for in this agreement, shall be \$ per day.
13. **Project Personnel.** No change in the staffing of the project as set out in Design Professional's Response to the Request for Proposals, including employees of the Design Professional, consultants, or subcontractors, shall be permitted without the approval of APS. APS shall have the right to disapprove the employment by Design Professional of any person, including subcontractors or consultants.



Agreement between the Albuquerque Public Schools and
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CONDITIONS OR SERVICES

PART A OF AGREEMENT, PAGE 4 OF 5

14. Other. *(If not used, please indicate N/A. If used, include a complete description of expected services)*
END OF OTHER CONDITIONS OR SERVICES
-



Agreement between the Albuquerque Public Schools and
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PROFESSIONAL SERVICES AGREEMENT SIGNATURE

PAGE

and

Continuation of Other Conditions and Services *(if required)*

PART A OF AGREEMENT, PAGE 5 OF 5

(continue Other Conditions and Services here if required, or delete if not required)

Contract No.:

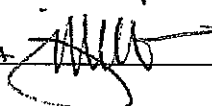
Project No.:

IN WITNESS WHEREOF, parties have executed this Agreement as of the date of signature by the Albuquerque Public Schools

AGREED

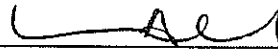
DESIGN PROFESSIONAL:

By: JOSE ZOLAYA



Date: 2.16.2017

ALBUQUERQUE PUBLIC SCHOOLS: By:



Date: 22 Feb 17



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