



NEW MEXICO PUBLIC SCHOOL FACILITIES AUTHORITY

1312 Basehart SE # 200, Albuquerque, NM 87106 • (505) 843-6272 • <https://www.nmpsfa.org/>

**HVAC & CONTROLS PERFORMANCE ASSURANCE CONTRACTOR SERVICES
CONTRACT # PA2025-09**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Public School Facilities Authority, hereinafter referred to as the "PSFA," and Bath Group, LLC, hereinafter referred to as the "Contractor," and is effective as of the date set forth below.

WHEREAS, the PSFA issued a Request for Proposals, titled "HVAC & Controls Performance Assurance Contractor RFP#2025-001-DD" (RFP);

WHEREAS, the RFP, Addenda and the Proposal submitted by Contractor are incorporated by reference and made a part of this Agreement by way of reference;

WHEREAS, the Contractor has the experience, technical ability and is fully licensed to provide hazardous materials abatement services in conformity with the laws of the State of New Mexico;

WHEREAS, this Agreement shall be utilized by the PSFA and school districts collectively, on an as-needed-basis, when the PSFA and school districts are Co-Owners of a Public School Capital Outlay Council (PSCOC) funded project, or by the PSFA or school districts acting on their own; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work.

- A. For each Project, the Contractor shall provide and perform all necessary, required, services specified in the Contractor's accepted and approved Quote in conformance with the services listed at Exhibit A of this Agreement.
- B. Contractor shall submit a proposal for each Project on the established Quote Form hereto attached as Appendix No. 1.
- C. A purchase order will be assigned for each Project.

2. Compensation.

- A. The Contractor shall be compensated in full payment for services satisfactorily performed for completion of set deliverables as set forth in the accepted and approved Quote in conformance with the rates established at Exhibit B.

- B. Payment shall be made upon acceptance of each deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice.
- C. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of acceptance.
- D. The Contractor shall be reimbursed for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification Number. Contractor and all subcontractors shall pay all Federal, state and local taxes Applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold OWNER AND CO-OWNER harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- E. The Contractor shall be reimbursed for allowed travel expenses herein defined in Appendix No.1. Itemized receipts are required as expense documentation for all reimbursements. If an itemized receipt is not submitted as the expense documentation, reimbursement for that purchase will not be given. Lump sum receipts will not be accepted. Allowed billable travel expenses shall not exceed the State of New Mexico's current allowable travel and per diem limits; NMAC 2.42.2.8.A-B.
- F. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached in the approved and accepted quote. Contractor is responsible for notifying the PSFA when the services provided under the quote reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without an amendment to the quote.

3. Term.

This Agreement shall become effective when signed by the PSFA and shall terminate on October 1, 2028 unless terminated pursuant by the Termination and Appropriations provisions of this Agreement. The PSFA reserves the right to renew the Agreement through a written amendment signed by all required signatories, but in this case, the Agreement shall not exceed the total number of years allowed pursuant to Section 13-1-50 NMSA 1978.

4. Termination.

- A. Grounds. The PSFA may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the PSFA's uncured, material breach of this Agreement.

B. Notice; PSFA Opportunity to Cure.

- 1) Except as otherwise provided in Paragraph (4)(B)(3), the PSFA shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
- 2) Contractor shall give PSFA written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the PSFA's material breaches of this Agreement upon which the termination is based and (ii) state what the PSFA must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the PSFA does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the PSFA does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
- 3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the PSFA; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the PSFA's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PSFA'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the PSFA or the Contractor of notice of termination of this Agreement, the Contractor shall:

- 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the PSFA;
- 2) comply with all directives issued by the PSFA in the notice of termination as to the performance of work under this Agreement; and
- 3) take such action as the PSFA shall direct for the protection, preservation, retention or transfer of all property titled to the PSFA and records generated under this Agreement.

Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the PSFA upon termination and shall be submitted to the PSFA as soon as practicable.

5. **Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the PSFA to the Contractor. The PSFA's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the PSFA proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. **Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the PSFA and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **Assignment.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the PSFA.

8. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the PSFA. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring PSFA.

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the PSFA, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the PSFA.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the PSFA no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

- A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any PSFA employee while such employee was or is employed by the PSFA and participating directly or indirectly in the PSFA's contracting process;
 - 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
 - 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way

regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the PSFA's making this Agreement;

- 4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
 - 5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
 - 6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the PSFA.
- C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the PSFA relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the PSFA if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the PSFA and notwithstanding anything in the Agreement to the contrary, the PSFA may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B. If the PSFA proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for Violation of Law.

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

16. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

17. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the PSFA.

18. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the PSFA, the General Services Department/State Purchasing Division and the State Auditor. The PSFA shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the PSFA to recover excessive or illegal payments

19. Indemnification.

The Contractor shall defend, indemnify and hold harmless the PSFA and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the

actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the PSFA and the Risk Management Division of the New Mexico General Services Department by certified mail.

20. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

21. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

22. Insurance.

A. Prior to any work/services to be performed for any Project under this agreement, the Contractor shall provide the PSFA and Co-Owner with a Certificate of Insurance acceptable to the PSFA for the following described insurance coverages. The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance. The Insurance shall be written on an occurrence basis. The PSFA shall be listed as additional insured on the Contractor's policies. The Certificates of Insurance shall contain provisions that coverages afforded under the policies will not be canceled or allowed to expire until at least forty-five (45) days prior written notice has been given to the PSFA.

- i. **Worker's Compensation Insurance and Employer's Liability Insurance.** Worker's compensation insurance and employer's liability insurance in compliance with the laws of all applicable jurisdictions and any other coverages that may apply where the work is performed covering all employees engaged in the performance of the Work associated in this Agreement and any project hereunder, including coverage for Employer's Liability for:
 - a. Bodily Injury by Accident: \$100,000 each accident
 - b. Bodily Injury by Disease: \$100,000 each employee
- ii. **Comprehensive General Liability Insurance,** including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability, for all liability the Contractor will assume under the awarded Agreement. Limits shall not be less than the following:

- a. Bodily Injury: \$1,000,000 per person / \$1,000,000 per occurrence.
 - b. Property Damage or combined single limit coverage: \$1,000,000.
 - c. Personal and advertising injury limit: \$1,000,000.
 - iii. **Professional Liability Insurance.** The Contractor shall provide and maintain Professional Liability Insurance with one million dollar limit (\$1,000,000) and shall be maintained in full force and effect at all times during the performance of Project.
 - iv. **Liability Insurance.** The Contractor shall maintain insurance that shall protect the Contractor from claims set forth below, which may arise out of or result from operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by anyone directly or indirectly employed, or by anyone for whose acts may be liable:
 - a. Claims under Workers' Compensation, Disability Benefit and other similar Employee Benefit Acts, which are applicable to the Work to be performed;
 - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
 - c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- B. The Contractor will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.
- C. All policies shall be endorsed to provide that the underwriters and insurance companies of the Contractor shall not have any right so subrogate against the PSFA, Co-Owner or the State of New Mexico.

23. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the PSFA:

Daniel Dominguez, Contract Analyst
New Mexico Public School Facilities Authority
1312 Basehart Rd., SE Suite 200
Albuquerque, New Mexico 87106
Telephone: 505-468-0262
ddominguez@nmopsfa.org

To the Contractor:

Steve Alschuler, PE, CCP
Bath Group, LLC.
5345 Wyoming Blvd. NE Suite 201

Albuquerque, NM 87109
720-703-0152
salschuler@bathgroup.com

24. Equal Opportunity Compliance

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

25. Equitable Remedies

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the PSFA irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the PSFA, and the Contractor consents to the PSFA's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The PSFA's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that PSFA may have under applicable law, including, but not limited to, monetary damages.

26. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the Contractor and PSFA signature below.

By: Steve Alschuler
Steve Alschuler
Principal of Commissioning
Bath Group, LLC.

Date: 9/25/2024

By:



Iris K. Romero
PSFA Executive Director
New Mexico Public School Facilities Authority (PSFA)

Date:

9.20.24

The records of the Taxation and Revenue Department reflect that the **Contractor** is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

Contractor NM Tax ID Number: _____

SAMPLE AGREEMENT: EXHIBIT A
Scope of Work

1. PURPOSE OF THIS REQUEST FOR PROPOSAL

- 1.1. The NMPSFA is seeking proposals from qualified firms to provide comprehensive services under the NMPSFA HVAC and Controls Performance Assurance Program for projects throughout the State's public school districts and charter schools on an as-needed basis. The NMPSFA has established the qualifications required for a Performance Assurance Contractor (PAC) to be selected for participation in the HVAC and Controls Performance Assurance Program, provides administration of the Program and monitors PAC services performed under the Program. The successful Offeror(s) will be required to provide qualified staff members to perform this Scope of Work.
- 1.2. The design, installation, and proper operation of HVAC and control systems in public school facilities is critical to providing a comfortable learning environment for students and teachers. These systems also represent a major investment during building construction or renovation and incur continuing life cycle costs for maintenance, repair, and energy use over the service life of the building. It is therefore highly important that HVAC and control systems meet NMPSFA standards for functionality, maintenance/life cycle costs, community/district suitability and energy costs.

2. THE HVAC AND CONTROLS PERFORMANCE ASSURANCE PROGRAM

- 2.1. In addition to Adequacy Standards, Facility Master Plan and Maintenance Plan guidelines, the NMPSFA has developed an HVAC and Controls Performance Assurance Program to supplement NMPSFA Design Standards and other construction requirements and to increase communication between all parties throughout the phases of projects funded through the PSCOC/NMPSFA.
- 2.2. The HVAC and Controls Performance Assurance Program requirements are provided via the NMPSFA website to Design Professionals and will be integrated with the NMPSFA design and construction process to avoid additional steps and decisions that may introduce unacceptable delays. Further, the HVAC and Controls Performance Assurance Program will provide direction for the 11-month Correction Period.
- 2.3. The Program's requirements are expected to be included in the bid and construction documents to provide a defined process for assurance and documented verification that the HVAC and control systems for a school facility meet NMPSFA standards for acceptability, are installed and operating properly, and fulfill the functional and performance requirements of the design intent.
- 2.4. School Districts and their design teams in concert with the successful Offeror(s) of this RFP will be utilizing the HVAC and Controls Assurance Program for renovations and new construction projects.

2.5. While the HVAC and Controls Performance Assurance Program contains several elements normally found in the building systems commissioning process, the full services of a commissioning agent are **not** anticipated by the NMPSFA nor should they be proposed by the PAC for the performance assurance activities in the Program. The performance assurance services provided under this Program are specifically those described for the following:

2.5.1. Heating, Ventilating and Air Conditioning (HVAC) equipment and systems, and auxiliary components.

2.5.2. Control Systems including Direct Digital Controls (DDC) and Building Management Systems (BMS), connectivity, and communication of alarms and events from ancillary building subsystems to those systems when required for the Project.

2.6. To avoid confusion, HVAC and Controls Performance Assurance Program activities shall not be referred to as "commissioning", which relates to additional activities on projects beyond the scope of this Program and shall not be acceptable in the HVAC and Controls Performance Assurance context.

3. OVERVIEW OF SERVICES TO BE PROVIDED

3.1. The NMPSFA will utilize the HVAC and Controls Performance Assurance Program for projects funded through the PSCOC/NMPSFA Standards Based Capital Outlay Program. Prospective Offeror(s) must know the program requirements. In addition to the program requirements, Offeror(s) must also be familiar with the "Guidelines to the New Mexico Public School Adequacy Standards, the NMAC 6.27.30 Statewide Adequacy Standards, and the NMAC 6.27.31 Special Purpose Schools Educational Facility Adequacy. These documents, as well as the Master Facility Plan guidelines and the HVAC and Controls Performance Assurance Program Manual are available on the NMPSFA website at <http://www.nmpsfa.org>.

3.2. The HVAC and Controls Performance Assurance Program utilizes the services of an independent third-party PAC that holds a Price Agreement with the NMPSFA. The Program requires the professional services of a PAC who, along with his subcontractors, is not contractually associated with business entities that sell, install or repair HVAC and control systems, which is experienced in the field of evaluation of HVAC and control systems design, installation, testing and balancing, and is capable of maintaining an unbiased third-party position.

3.3. A Contractor will be selected for a project, or specified portion of the project, based on the Contractor's submitted Price Matrix proposal. See Exhibit B for an example of the Price Matrix forms.

4. COMMUNICATION FACILITATION REQUIREMENTS

4.1. Communication utilizing the NMPSFA Internet/Web based Construction Information Management System (CIMS) is a requirement of Basic Services. The PAC firm shall, if

needed and within **seven (7) days** following execution of a Purchase Order to provide PAC services for a project, schedule NMPSFA training of project personnel on the use of NMPSFA-CIMS. The PAC firm shall utilize the NMPSFA-CIMS for project management during development of the Contact Documents and for project administration during construction of the project. Each party shall:

- 4.1.1. Create all contractual communications through the NMPSFA-CIMS and load all reports, meeting notes, and any other pertinent project information into the NMPSFA-CIMS.
- 4.1.2. Have access to the internet and an internet-email address of their own choice, and provide NMPSFA with the names, positions and email addresses of all individuals who will have access to the NMPSFA-CIMS.
- 4.1.3. Have adequate computing hardware to run the NMPSFA-CIMS, including:
 - 4.1.3.1. Operating System: Windows® XP or newer.
 - 4.1.3.2. Support Internet Browsers Explorer 7.0, 8.0, 9.0, 10.0, Google Chrome (current V29), Mozilla Firefox (current V23), Apple Safari for Mac (OS X 10.8 V6.0.4), Apple Safari for Windows (V5.1.7), Apple Safari for iOS mobile (V6.1). Note: Additional browsers such as Firefox, Chrome and Safari do not support the Active X controls required.
 - 4.1.3.3. Screen Resolution: Minimum 1024 x 768 (Recommended horizontal resolution 1280 or higher)
 - 4.1.3.4. Processor Speed: 1 Gigahertz and above Minimum Recommended Connection Speed: 256k or above
 - 4.1.3.5. RAM: 512 MB or higher
- 4.1.4. Agree that use of the NMPSFA-CIMS software will not replace or change any contractual responsibilities.
- 4.1.5. Have installed Adobe Acrobat 7.0 or higher, pdf converter or equal.
- 4.1.6. Optionally have an attached scanner (minimum 800x600 pixels) and a digital camera (minimum resolution of one (1) mega pixels). The scanner and digital camera would serve as a benefit to sending images as an e-mail attachment to the Design Professional, NMPSFA, or Owner, rather than faxing or mailing the image.
- 4.1.7. In addition, the PAC firm will need the following downloads:
 - 4.1.7.1. Multi-file Upload Tool: to drag and drop multiple files into e-Builder
 - 4.1.7.2. Redline/View Tool: to view and markup AutoCAD drawings and picture files
 - 4.1.7.3. Adobe Acrobat Reader: to view PDF documents

- 4.1.7.4. Navis Works Viewer: to enable the collaborative review and markup of BIM models through this integrated viewer
- 4.1.8. For NMPSFA-CIMS information or installation and use of the NMPSFA-CIMS, or for scheduling training, contact NMPSFA Training at (505) 468-0311, or e-mail your questions to training@nmpsfa.org and include NMPSFA-CIMS support in the subject line.

5. DESIGN DEVELOPMENT STAGE

- 5.1. Upon engagement, the Performance Assurance Contractor, hereby referred to as "PAC", shall review and submit comments as it relates to the Performance Assurance Program, the Design Professionals' Design Intent and Basis of Design, prior to 60% Design Development.
- 5.2. The PAC shall review and submit comments to the Design Team (DT) at 95% Design Development.
- 5.3. The PAC shall review and submit comments to the DT at 100% Issue For Bid (IFB)/Issue For Construction (IFC).
- 5.4. The PAC shall review and submit comments on the Sequence of Operations (SOO) with the Control Engineer.
- 5.5. The PAC shall submit PAC Specifications and Performance Assurance requirements to the Design Professional (DP) for inclusion into the Project Documents.
- 5.6. The PAC shall create, maintain, and update a Design Issues Log on design issues related to Performance Assurance. An NMPSFA approved Issues Log Template can be found on the NMPSFA Website (<https://www.nmpsfa.org>). If the PAC desires to use their own template, it must meet or exceed the intent of the NMPSFA Approved Template and be approved by NMPSFA prior to use.
- 5.7. The PAC shall create an equipment list to be witnessed, verified, and documented through the Performance Assurance Program for the project. An NMPSFA approved Equipment List Template can be found on the NMPSFA Website (<https://www.nmpsfa.org>). If the PAC desires to use their own template, it must meet or exceed the intent of the NMPSFA Approved Template and be approved by NMPSFA prior to use.
- 5.8. The PAC shall develop their Performance Assurance Plan to be maintained and updated through the Project.
- 5.9. The PAC shall develop a Performance Assurance Milestone Schedule.
- 5.10. The PAC shall develop Pre-Functional Checklists (PFC). NMPSFA approved PFC Templates can be found on the NMPSFA Website (<https://www.nmpsfa.org>). If the PAC

desires to use their own template, it must meet or exceed the intent of the NMPSFA Approved Template and be approved by NMPSFA prior to use.

5.11. The PAC shall review and comment on the Test, Adjust, and Balance (TAB) testing requirements with the GC and TAB Contractor.

5.12. The PAC shall review and comment on Equipment Submittals as they pertain to the PAC's Performance Assurance activities.

6. CONSTRUCTION STAGE

6.1. The PAC shall ensure close out of the Performance Assurance Design Issues Log.

6.2. The PAC shall create, maintain, and update an Installation Issues Log on design issues related to Performance Assurance. An NMPSFA approved Issues Log Template can be found on the NMPSFA Website (<https://www/nmpsfa.org>). If the PAC desires to use their own template, it must meet or exceed the intent of the NMPSFA Approved Template and be approved by NMPSFA prior to use.

6.3. The PAC shall begin submitting Site Observation Reports (SOR) for each site visit. The SOR shall detail the purpose of the visit, with whom was met, observations made, issues encountered, testing, and attached photos that are labeled to support observations and issues. An NMPSFA approved SOR Template can be found on the NMPSFA Website (<https://www/nmpsfa.org>). If the PAC desires to use their own template, it must meet or exceed the intent of the NMPSFA Approved Template and be approved by NMPSFA prior to use.

6.4. The PAC shall attend the Project Kick-Off Meeting, which may include the PAC Kick-Off Meeting, and submit to the General Contractor (GC) the PFC Binder which includes the expectations and deliverables of the PFC's, submit the Performance Assurance Milestones Schedule for inclusion into the Project Schedule, Manufacturer Start-up requirements, Functional Performance Testing requirements, Opposite Season Functional Testing, 11-Month Inspection and Correction, and Contractor requirements for PAC Close-Out. If the PAC Kick-Off Meeting is not conducted with the Project Kick-Off Meeting, the PAC shall schedule their Kick-Off Meeting with the Owner(s), Test, Adjust, and Balance Contractor (TAB), DP, and GC, preferably within one (1) week of the Project Kick-Off Meeting.

6.5. The PAC shall make periodic visits, and document with SOR's, to attend Contractor's Progress Meeting, review the Project Schedule, update the PAC Installation Issues Log with the DP and GC's Punch List, review progress of PFC's, review Manufacturer Start-Up Procedures, visually inspect First-Of-A-Kind (FOAK) equipment installs, and be a resource to the Owner, DP, GC, and Sub's on concerns and issues related to Performance Assurance.

6.6. The PAC shall commence review, comment, and verification of the Operation and Maintenance Manuals (O&M).

- 6.7. The PAC shall ensure PFC's are being completed correctly and verify Equipment and Systems are ready for Manufacturer's Start-Up.
- 6.8. The PAC shall witness, verify, and document Manufacturer's Start-Up of equipment and systems under the PAC's Performance Assurance contract.
- 6.9. The PAC shall participate in and document the first day of Test, Adjust, and Balance (TAB).
- 6.10. The PAC shall schedule and conduct Functional Performance Testing with the DP and GC. The PAC shall endeavor to include the District's Maintenance Personnel, when feasible, in the performance of the FPT's. The PAC shall identify if and what additional testing is required.
- 6.11. The PAC shall address any unresolved issues from the PAC Installation Issues Log.

7. CONSTRUCTION CLOSE-OUT

- 7.1. The PAC shall schedule and conduct a Lesson's Learned Meeting with the Owners, DP, GC, and involved Sub's to discuss and document how the project went well and what could be improved upon going forward.
- 7.2. The PAC shall submit the Performance Assurance Final Report, formatted as to the Contract Documents, to be added with the testing and documentation from follow-up activities listed below.
- 7.3. The PAC shall discuss and schedule the upcoming Opposite Season Functional Testing.
- 7.4. The PAC shall develop Opposite Season Functional Testing Scripts and submit to the Owners, DP, and GC for review.
- 7.5. The PAC shall witness, verify, and document the District's Maintenance Personnel Training to assure it meets the requirements of the Performance Assurance Program.
- 7.6. The PAC shall review, comment, and finalize submitted O&Ms.
- 7.7. The PAC shall assure all Performance Assurance related design, construction, and testing documents are current, complete, and submitted to the Owners for acceptance and inclusion in the NMPSFA's Computerized Information Management System (CIMS).

8. OPPOSITE SEASON FUNCTIONAL TESTING

- 8.1. The PAC shall assure no critical PAC issues remain from the Construction Stage.
- 8.2. The PAC shall schedule, conduct, and document Opposite Season Functional Testing. Opposite Seasonal Functional Testing shall be scheduled when seasonal demands shift from when the original Functional Testing was conducted (i.e.: demands shift from Heating to Cooling). The PAC shall identify if and what additional testing is required.

9. 11-MONTH WARRANTY AND CORRECTION STAGE

- 9.1. The PAC shall participate in the 11 Month Warranty and Correction Inspection and note any issues and abnormalities that pertain to Performance Assurance.
- 9.2. The PAC shall add the 11-Month Warranty and Correction Inspection to the PAC's Final Report.

10. GENERAL NOTES

- 10.1. It is important that all updated and completed documents related to Performance Assurance, shall be submitted to the NMPSFA's Region Facilities Manager (RFM) within 72 hours, so to assure acceptance and upload to the NMPSFA's CIMS for review and invoice submissions.
- 10.2. Ensure that the NMPSFA RFM is continually notified of any issues, changes, updates, and submissions related to Performance Assurance.
- 10.3. When school is in session, the scheduling of Functional Testing and TAB activities may be after hours or weekends.
- 10.4. Be aware that some of the submissions listed above are Processes of the NMPSFA's CIMS. Be sure to review the Processes within the NMPSFA's CIMS and utilize those Processes so to better organize and tack submissions.

10.5. General Requirements for Preparation of Proposals to Owner for Work on Individual Projects

- 10.5.1. Upon notification that the PAC firm has been assigned a NMPSFA project, the PAC firm shall, no later than fifteen (15) days from the date of notification, present a *cost-not-to-exceed proposal* in the format provided by NMPSFA.
- 10.5.2. The PAC proposal shall represent the work that the Owner and NMPSFA have agreed on and shall be developed using the latest version of the NMPSFA PAC Pricing Matrix. The Matrix is found in the HVAC and Controls Performance Assurance Program Manual. An Excel version can be provided to the Contractor by PSFA. The PAC proposal shall be based on the anticipated level of effort for each project, including all labor hours and materials. Flat-fixed pricing or pricing based on a building square footage basis shall not be acceptable.
- 10.5.3. The NMPSFA shall review the proposal and, if approved, notify the District Representative to process a purchase order to proceed with the work.
- 10.5.4. Projects assigned to the PAC firm may be wholly or partially funded by PSCOC. The PAC proposal may be required to be broken down by the percentages of participation by the Owner/District and by NMPSFA. IF the Owner/District is participating in the award, and the NMPSFA RPM determines that a breakdown in

the proposal reflecting those percentages is required, the PAC will receive a Purchase Order from the NMPSFA for their portion of the work, and a Purchase Order from the Owner/District for their portion of the work. Invoices shall be submitted reflecting each entity's portion accordingly.

10.6. Price Proposal for Each Stage shall be submitted as follows

10.6.1. Prior to the end of the Schematic Design Phase, the NMPSFA RPM shall request a price proposal for "**Design Stage**" services from the PAC. The PAC Design Stage Scope of Work included in Appendix A of the NMPSFA HVAC and Controls Performance Assurance Program Manual, modified as needed to delete any irrelevant items on specific projects, shall be used as the basis for the PAC's price proposal. This work is summarized in the Design Stage Performance Assurance Activities Matrix (see example in Figure 1 below), which shall be included in the request for the PAC's price proposal, with the NMPSFA RPM inserting marks (X) indicating the activities included.

Figure 1: Example of PAC Design Stage Services

Performance Assurance Systems	Design Stage Performance Assurance Activities						
	(X) Included in PAC Scope of Work	Review and comments on Design pertaining to PAC prior to 60% Submittal (DD)	Create and Maintain Design Issues Log	Develop PAC Plan and provide to Design Professional, including Construction (Pre-functional) Checklist	Review 95% Design (CD)	Review 100% Documents Prior to Bidding	Review Contractor Bids, as related to PAC Activities if request of NMPSFA
HVAC and Controls	X	X	X	X	X	X	X

10.6.1.1. The PAC's Design Stage Pricing shall be the basis for executing a contract for the PAC's Design Stage services.

10.6.2. Construction Stage Price Proposal

10.6.2.1. During the Construction Documents Phase, once the types of HVAC and controls systems are finalized, the NMPSFA RPM shall request a price proposal for Construction Stage services from the PAC. Pricing shall be for services related to the PAC Construction Stage Scope of Work described in Appendix A of the NMPSFA HVAC and Controls Performance Assurance Program Manual, modified as needed to delete any irrelevant items on specific projects. A copy of the Construction Stage Performance Assurance

Activities Matrix, (see example in Figure 2 below), with the NMPSFA RPM inserting marks (X) indicating the included activities, shall be included in the request for the PAC's price proposal.

Figure 2: Example of PAC Construction Stage Services

Performance Assurance Systems	Construction Stage Performance Assurance Activities										
	Conduct PAC Coordination Meeting	Review "Filtered" RFIs and MCRs (related to PAC Activities)	Perform Periodic Site Visits	Create and Maintain PAC Installation Issues Log	Maintain Design Issues Log	Distribute Construction (Pre-Functional) Checklists	Write Detailed Functional Test Procedures	Manage and Document Functional Testing	Provide Draft of Final Report prior at Document Closeout	Provide 11-Month Correction Period Support	Develop and Submit Final PAC Report
HVAC and Controls	X	X	X	X	X	X	X	X	X	X	X

10.6.3. 11-Month Correction Period Pricing

10.6.3.1. Pricing for performance assurance activities carried over from the Construction Phase, including test and balance, seasonal or follow-up testing and verification, or adjusting and optimizing systems to meet project specifications, shall be included in the Construction Stage Price referenced in Paragraph 10.6.2. above.

10.6.4. Additional Services

10.6.4.1. Any additional services exceeding the cost and scope of the initial **Purchase Order**, shall be mutually agreed to in advance by the Owner, NMPSFA, and the PAC firm, and shall be authorized by the Owner and NMPSFA through an approved **Amendment to the Proposal** prior to the PAC firm proceeding with any additional work. The Amendment to the Proposal may form the basis of an additional **Purchase Order** to cover those additional services, or in an amendment to the existing purchase order, depending on circumstances, and approval by the NMPSFA Regional Manager and Owner. It is the PAC firm's responsibility to inform the Owner and the NMPSFA Representative in advance and in a timely manner when it is anticipated that the proposal for services will require modifications due to changes in the work.

10.6.5. Compensation

- 10.6.5.1. The PAC shall not be issued a Purchase Order until the NMPSFA/PAC Pricing Matrix is submitted and approved by the NMPSFA.
- 10.6.5.2. No invoice shall be approved for payment until the required reports and/or documentation requested have been submitted to appropriate parties for approval.
- 10.6.5.3. PAC invoicing shall reflect only the actual services provided, hours used, and documented expenses for the line items in the Pricing Matrix. In aggregate, the PAC's invoices shall not exceed the maximum price in the contract for each stage of the project, unless approved in advance by the NMPSFA through the established process for authorizing additional work.
- 10.6.5.4. Contractor shall be reimbursed for gross receipts tax, subject to the current tax rate at the time of the issuance of the Work Order.

10.6.6. Billable Travel Expenses

- 10.6.6.1. Allowed billable travel expenses shall not exceed the State of New Mexico's allowable travel per diem and mileage amount limits. See NMAC 2.42.2.8.A – B:

MEALS:

- (a) for less than 2 hours of travel beyond normal work day, none;
- (b) for 2 hours, but less than 6 hours beyond the normal work day, \$20.00;
- (c) for 6 hours, but less than 12 hours beyond the normal work day, \$42.00;
- (d) for 12 hours or more beyond the normal work day, \$59.00;

LODGING:

Overnight travel;

- (a) in state areas \$166.00
- (b) in state special areas \$231.00

MEALS:

Return from overnight travel:

- (a) for less than 2 hours, none;
- (b) for 2 hours, but less than 6 hours, \$20.00;
- (c) for 6 hours or more, but less than 12 hours, \$42.00;
- (d) for 12 hours or more, \$59.00.

MILEAGE:

Mileage-Private Conveyance Rate:

For the period of July 1, 2024 through December 31, 2024, the New Mexico mileage rate is \$0.67 per mile, (This amount is subject to change by the State of New Mexico.) per NMAC 2.42.2.11:

- (1) unless the secretary has reduced the rates set for mileage...
pursuant to Section 10-8-5 (D) NMSA 1978, 80% of the internal
revenue service standard mileage rate set January 1 of the previous
year for each mile traveled in a privately owned vehicle;

SAMPLE AGREEMENT: EXHIBIT B
Rate Schedule

	*PERSONNEL TITLE/CLASSIFICATION	PAY RATE	
1.	Principal Engineer	\$180.00	Per hour
2.	PAC Project Manager	\$165.00	Per hour
3.	PAC Engineer P.E.	\$150.00	Per hour
4.	PAC Engineer E.I.T.	\$140.00	Per hour
5.	PAC Technician	\$125.00	Per hour
6.	Administrative Staff	\$90.00	Per hour
		\$	Per hour
		\$	Per hour
		\$	Per hour
		\$	Per hour