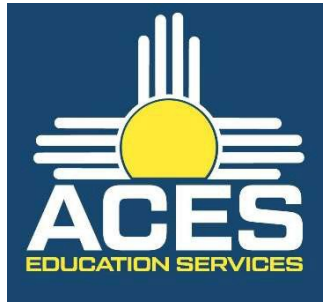


**NEW MEXICO**  
**ASSOCIATION OF CHARTER SCHOOLS EDUCATION SERVICES**



**AGENCY AGREEMENT AND  
INCORPORATING CONTRACT**

**ACES Contract Number:** ITB 22-001

**Commodity:**  
HVAC, PLUMBING, ELECTRICAL AND REFRIGERATION  
ON-CALL AND PREVENTATIVE MAINTENANCE SERVICES

**Established by:**     **Cooperative Procurement**     **Price Agreement**

**CONTRACT TERM (subject to annual renewal):**  
September 12, 2023, to June 30, 2027

**Number of awards: 8**

**Contractors:**

B&D Industries  
CAC, Inc.  
Donner Heating and Plumbing  
Frisbie Heating and Cooling  
PC Automated Controls  
TLC, Inc.  
XEnergy Mechanical  
Yearout Mechanical

ACES approved by:

*Christy Takacs*

Christy Takacs (Apr 30, 2024 16:07 MDT)

Christy Takacs  
Executive Director, Chief Procurement Officer

Date: 04/30/2024

## Table of Contents

FOR AGENCIES .....	3
FOR CONTRACTORS .....	4
AWARDED CONTRACTORS .....	5
AGREEMENT .....	7
1. PURPOSE .....	8
2. TERM OF THE AGREEMENT .....	8
3. RELATIONSHIP OF THE PARTIES .....	9
4. SCOPE OF WORK .....	10
5. COMPENSATION .....	10
6. ORDERING AGENCY RESPONSIBILITY .....	11
7. INSPECTION .....	11
8. RESPONSIBILITY .....	12
9. COOPERATION .....	12
10. AGENCY FURNISHED PROPERTY .....	12
11. NON-SOLICITATION .....	12
12. AMENDMENT .....	12
13. MERGER .....	12
14. APPROPRIATIONS AND CONTINUATION OF CHARTER .....	13
15. INSURANCE .....	13
16. SEVERABILITY .....	13
17. APPLICABLE LAW .....	13
18. ASSIGNMENT and SUBSTITUTION .....	13
19. PURCHASE OF GOODS AND SERVICES .....	14
20. CONFIDENTIALITY .....	14
21. CONFLICT OF INTEREST .....	14
22. PENALTIES .....	14
23. EQUAL OPPORTUNITY COMPLIANCE .....	14
24. RECORDS and FINANCIAL AUDIT .....	15
25. INDEMNIFICATION .....	15
26. NOTICES .....	16
27. DISPUTE RESOLUTION .....	16
28. LIMITED DAMAGES WAIVER .....	16
29. AUTHORITY .....	17
30. ATTACHMENT A	
31. PRICING DETAIL	

# FOR AGENCIES

***To become established as an ACES Participating Agency, or for questions regarding ACES in general, membership, contracts, etc.:***

Christy Takacs, Executive Director  
575-468-ACES (2237) ext. 100;  
Email: [ed@nmaces.org](mailto:ed@nmaces.org)

***For questions regarding purchase orders, invoices or payments:***

Katherine Moore, Business Manager  
575-468-ACES (2237) ext. 101  
Email: [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org)

***For questions regarding procurement, use of contracts, vendor performance, etc.:***

Tammy West, Procurement Manager  
575-468-ACES (2237) ext. 102  
Email: [procurement1@nmaces.org](mailto:procurement1@nmaces.org)

## **PURCHASE ORDER AND PAYMENT INSTRUCTIONS:**

- ✓ A PURCHASE ORDER WITH ALL REQUIRED INFORMATION **MUST** BE RECEIVED BY ACES **PRIOR TO** THE DELIVERY OF ITEMS AND/OR COMMENCEMENT OF SERVICES BY THE CONTRACTOR.
- ✓ ALL PURCHASE ORDERS ISSUED UNDER THIS AGREEMENT MUST REFERENCE THE CONTRACTOR/VENDOR NAME, CORRESPONDING ACES CONTRACT NUMBER AND COMMODITY TITLE FOUND ON THE FIRST PAGE OF THIS AGREEMENT DOCUMENT.
- ✓ PURCHASE ORDERS SHALL BE SENT TO ACES BY EMAIL AT:  
[businessoffice@nmaces.org](mailto:businessoffice@nmaces.org).
- ✓ PAYMENT SHALL BE MADE TO ACES ***WITHIN 15 DAYS*** AFTER RECEIPT OF ACES INVOICE, SUBJECT TO LATE FEES.

**FAILURE TO DO ANY OF THE ABOVE PURCHASE ORDER INSTRUCTIONS MAY RESULT IN THE PARTICIPATING AGENCY BEING RESPONSIBLE FOR DIRECT PAYMENT TO THE CONTRACTOR AND/OR MAY CONSTITUTE A FAILURE TO COMPLY WITH NEW MEXICO PROCUREMENT CODE AND/OR BE CAUSE FOR AUDIT FINDING.**

# FOR CONTRACTORS

***For general questions, information regarding this contract, questions or issues regarding provision of products and/or services or to refer a school or public agency for membership:***

Christy Takacs, Executive Director  
575-468-ACES (2237) ext. 100;  
Email: [ed@nmaces.org](mailto:ed@nmaces.org)

***For procurement related assistance, questions regarding this contract, or for assistance related to the provision of product and/or services and anything related:***

Tammy West, Procurement Manager  
575-468-ACES (2237) ext. 102  
Email: [procurement1@nmaces.org](mailto:procurement1@nmaces.org)

***For questions regarding purchase orders, invoices or payments:***

Katherine Moore, Business Manager  
575-468-ACES (2237) ext. 101  
Email: [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org)

## **PURCHASE ORDER/INVOICING/PAYMENT INSTRUCTIONS:**

**PAYMENT TERMS: NET 30 *after certification*** that goods/services have been received and meet specifications.  
(PER NM LAW, ALL PUBLIC AGENCIES HAVE 15 DAYS TO CERTIFY AFTER RECEIPT OF INVOICE)

- ✓ A PURCHASE ORDER WITH ALL REQUIRED INFORMATION **MUST** BE SENT FROM THE USING AGENCY TO ACES\* **PRIOR TO** THE DELIVERY OF ITEMS AND/OR COMMENCEMENT OF SERVICES BY THE CONTRACTOR.  
\*UNLESS A WAIVER HAS BEEN GRANTED FOR DIRECT INVOICING/PAYMENT
- ✓ ONCE A VALID PURCHASE ORDER IS RECEIVED FROM THE USING AGENCY, ACES WILL ISSUE A PURCHASE ORDER TO THE CONTRACTOR. UPON RECEIPT OF AN ACES PURCHASE ORDER, THE CONTRACTOR MAY PROCEED TO DELIVER ITEMS AND/OR PERFORM SERVICES.
- ✓ ALL INVOICES SHALL CONTAIN THE FOLLOWING INFORMATION:
  - **ACES** PURCHASE ORDER NUMBER
  - NAME OF USING AGENCY
- ✓ INVOICES SHALL BE SENT TO ACES BY EMAIL TO: [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org).

# AWARDED CONTRACTORS

## COMPANY INFORMATION

## SERVICE AREA

AUTHORIZED FOR  
PUBLIC WORKS  
PROJECTS?

### **B & D INDUSTRIES**

9720 BELL AVE. SE  
ALBUQUERQUE, NM 87123  
**CONTACT:** CHRISTOPHER GIOVENCO  
**PHONE:** 505-299-4464  
**ALT. CONTACT:** VANESSA MARTIN  
**PHONE:** 505-299-4464  
**EMAIL:** [cgiovenco@banddindustries.com](mailto:cgiovenco@banddindustries.com)  
**WEB ADDRESS:** [www.banddindustries.com](http://www.banddindustries.com)  
**SERVICES PROVIDED:** HVAC, Refrigeration,  
Plumbing and Electrical

Albuquerque, Rio Rancho,  
Bernalillo, Santa Fe,  
Edgewood, Moriarty,  
Estancia, Cedar Crest,  
Tijeras, Los Lunas, Belen,  
Corrales, Bosque Farms

**YES**

### **CAC, INC.**

610 INDUSTRIAL AVE. NE  
ALBUQUERQUE, NM 87107  
**CONTACT:** TREVOR BEAGEN  
**PHONE:** 505-343-6100  
**EMAIL:** [trevorb@cacinc.net](mailto:trevorb@cacinc.net)  
**WEB ADDRESS:** [www.cacinc.net](http://www.cacinc.net)  
**SERVICES PROVIDED:** HVAC and Refrigeration

NM Statewide

**YES**

### **DONNER HEATING AND PLUMBING**

107 CANDELARIA ROAD, NW  
ALBUQUERQUE, NM 87107  
**CONTACT:** ANDREW KNIGHT  
**PHONE:** 505-884-1017  
**EMAIL:** [aknight@donnerplumbing.com](mailto:aknight@donnerplumbing.com)  
**WEB ADDRESS:** [www.donnerplumbing.com](http://www.donnerplumbing.com)  
**SERVICES PROVIDED:** HVAC, Refrigeration and  
Plumbing

Albuquerque  
(within 150-mile radius)

Hobbs  
(within 100-mile radius)

**YES**

### **FRISBIE HEATING AND COOLING**

807 DILLON LANE  
TAOS, NM 87571  
**CONTACT:** MATT FRISBIE  
**PHONE:** 575-779-1160  
**EMAIL:** [matt@frisbiehvac.com](mailto:matt@frisbiehvac.com)  
**SERVICES PROVIDED:** HVAC and Refrigeration

Taos, Questa, Peñasco,  
Red River, Eagle Nest,  
Cimmaron, Raton, Mora,  
Las Vegas, Santa Fe,  
Española, Los Alamos,  
Chama, Tierra Amarilla

**NO**

CONTINUED ON NEXT PAGE

# AWARDED CONTRACTORS

COMPANY INFORMATION	SERVICE AREA	AUTHORIZED FOR PUBLIC WORKS PROJECTS?
<p><b><u>PC AUTOMATED CONTROLS</u></b>            6565 AMERICAS PARKWAY NE STE. 200            ALBUQUERQUE, NM 87110  <b>CONTACT:</b> BOB LINZEY  <b>PHONE:</b> 505-895-9040  <b>ALT. PHONE:</b> 915-751-0313 EXT. 106  <b>EMAIL:</b> <a href="mailto:blinzey@pcautomatedcontrols.com">blinzey@pcautomatedcontrols.com</a>  <b>WEB ADDRESS:</b> <a href="http://www.pcautomatedcontrols.com">www.pcautomatedcontrols.com</a>  <b>SERVICES PROVIDED:</b> HVAC, Refrigeration and Electrical</p>	NM Statewide	YES
<p><b><u>TLC, INC.</u></b>            5000 EDITH BLVD. NE            ALBUQUERQUE, NM 87107  <b>CONTACT:</b> JARED BLASCHKE  <b>PHONE:</b> 505-525-7766  <b>ALT. PHONE:</b> 505-761-9696  <b>EMAIL:</b> <a href="mailto:jblaschke@tlcplumbing.com">jblaschke@tlcplumbing.com</a>  <b>WEB ADDRESS:</b> <a href="http://www.tlcplumbing.com">www.tlcplumbing.com</a>  <b>SERVICES PROVIDED:</b> HVAC, Refrigeration, Plumbing and Electrical</p>	NM Statewide	YES
<p><b><u>XENERGY MECHANICAL</u></b>            PO BOX 46196            RIO RANCHO, NM 87174  <b>CONTACT:</b> NICOLE TAFOYA  <b>PHONE:</b> 575-770-8179  <b>EMAIL:</b> <a href="mailto:info@xenergymechanical.com">info@xenergymechanical.com</a>  <b>WEB ADDRESS:</b> <a href="http://www.xenergymechanical.com">www.xenergymechanical.com</a>  <b>SERVICES PROVIDED:</b> HVAC, Refrigeration, Plumbing and Electrical</p>	Bernalillo County, Sandoval County, Mora County, Taos County and Colfax County	YES
<p><b><u>YEAROUT MECHANICAL</u></b>            8501 WASHINGTON            ALBUQUERQUE, NM 87113  <b>CONTACT:</b> REBECCA RODRIGUEZ  <b>PHONE:</b> 505-379-1994  <b>EMAIL:</b> <a href="mailto:rrodriguez@yearout.com">rrodriguez@yearout.com</a>  <b>WEB ADDRESS:</b> <a href="http://www.yearout.com">www.yearout.com</a>  <b>SERVICES PROVIDED:</b> HVAC, Refrigeration, and Plumbing</p>	NM Statewide	YES

<END>

# **AGREEMENT**

This AGREEMENT is made and entered into as of the last date signed by both parties, by and between the New Mexico Charter School Education Services Association (“ACES”), a public entity, existing under the laws of the State of New Mexico with a mailing address of P.O. Box 16326, Albuquerque, NM, 87191 and the CONTRACTOR, as identified and signed under paragraph 27 of this Agreement. Further, any ACES Participating Agency may become party to this agreement by issuing a valid purchase order based on the CONTRACTOR’S quote, referencing this ACES contract number.

## **RECITALS**

WHEREAS, the Joint Powers Agreement (JPA) that created ACES, indicates one of its lawful purposes is, “Purchase of professional services, construction services, and tangible personal property for local public bodies and state agencies when so requested and in accordance with the requirements of the Procurement Code”, and

WHEREAS ACES Members are charter schools party to the JPA as approved by Secretary of the New Mexico Department of Finance and Administration or an ACES Participating Agency, and

WHEREAS the CONTRACTOR was awarded a contract in response to ACES ITB 22-001, and

WHEREAS the parties agree that it is desirable to participate in the cooperative procurement of, or use of an established price agreement for, HVAC, PLUMBING, ELECTRICAL AND REFRIGERATION ON-CALL AND PREVENTATIVE MAINTENANCE SERVICES, to avoid duplicate procurement efforts and obtain the benefits of volume purchasing; and

WHEREAS, ACES, pursuant to the powers vested in it through the JPA, has awarded an Acceptance of Offer and Contract Award to CONTRACTOR to provide Special Education Support Services and Case Management to schools that are parties to the JPA and to Participating Entities that have an Agreement with ACES and represents to its members that said services are for a price that provides economic and other advantages for its members, and

WHEREAS, ACES has initiated a contract for HVAC, PLUMBING, ELECTRICAL AND REFRIGERATION ON-CALL AND PREVENTATIVE MAINTENANCE SERVICES and provides it to Participating Agencies in accordance with the Procurement Code NMSA 1978, §§ 13-1-21 to 199 and the New Mexico School Personnel Act NMSA 1978, §§ 22-10A-1, *et seq.*, and such other laws and regulations applicable to this contract, and

WHEREAS, ACES Participating Agencies participate in the solicitation, evaluation and/or use of cooperative contracts managed by ACES, or utilize established price agreements formally solicited by ACES, and become parties to this contract by issuing a valid purchase order referencing this contract, and

WHEREAS, the following documents are hereby incorporated into this contract by reference and made part of this contract:

- ITB 22-001 document with all addenda
- CONTRACTOR'S response to ITB 22-001 awarded by ACES, and as summarized in Attachment A.

NOW, THEREFORE, the parties hereto, in consideration of mutual covenants and promises contained herein,

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. PURPOSE**

The purpose of the Agreement is to authorize the parties' mutual participation in ITB 22-001 with the CONTRACTOR.

**2. TERM OF THE AGREEMENT**

*A. Effective Date.*

- 1) This Agreement shall be deemed effective between ACES and the CONTRACTOR as of September 12, 2023, and shall remain in effect through June 30, 2027, unless ACES exercises the right of non-renewal during any subsequent term, or unless termination otherwise occurs by either party. The Contractor may terminate this Agreement with written notice delivered to ACES at least sixty (60) days prior to the intended date of termination. ACES may terminate this Agreement with written notice delivered to the Contractor specifying the effective date and cause of termination. In terminating, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.
- 2) This Agreement shall be deemed effective between the CONTRACTOR and the ACES Participating Agency upon issuance of a valid purchase order referencing this contract. The date of the agreement commencement between the ACES Participating Agency shall be the date of the purchase order. The purchase order must be dated prior to the final termination date of the total contract term. The term of the agreement between the CONTRACTOR and the ACES Participating Agency is subject to §13-1-150 NMSA 1978.

*B. Termination Notice.* This Agreement may be terminated immediately with written notice to ACES Participating Agency if ACES or CONTRACTOR determines that immediate termination is in the best interest of ACES and CONTRACTOR or written note to CONTRACTOR if it determines that immediate termination is in the best interest of ACES and/or ACES Participating Agency. This provision is not exclusive and does not waive each party's other legal rights and remedies caused by the ACES Participating Agency or ACES default/breach of this agreement.

*C. Termination Management.* Immediately upon receipt by either ACES Participating Agency, CONTRACTOR or ACES of Notice of Termination of this Agreement, none of the parties shall: 1) incur any further obligations for salaries, services, or any other expenditure of funds, 2) shall enter any additional requests for services,



3) parties shall comply with all directives issued by the other parties in the notice of termination as included in this Agreement, and 3) all parties shall take such action as ACES Participating Agency, CONTRACTOR or ACES shall direct for protection, preservation, retention or transfer of all property and all records generated under this Agreement. Within ten (10) days of Notice of Termination is received, CONTRACTOR shall furnish ACES with final Invoice, and within an additional five (5), ACES shall furnish the ACES Participating Agency with final Invoice. Within thirty (30) days of receipt of Notice of Termination the ACES Participating Agency shall pay ACES according to the terms of Section 5, below.

### **3. RELATIONSHIP OF THE PARTIES**

- A. This Agreement is between ACES and the CONTRACTOR. Whenever an ACES Participating Agency issues a purchase order in response to CONTRACTOR'S written or verbal quote, based on and referencing this contract, the ACES Participating Agency then becomes party to this agreement and a binding contract between the three parties is created.
- B. CONTRACTOR acknowledges and agrees that ACES' purpose and function is to act as a cooperative procurement agent on behalf of its Participating Agencies so that they may take advantage of these procurement efforts. ACES does not have any subsequent responsibility relating to the quality and fitness of any Products, or the performance of any Services and Construction Services by Contract Holder. Any purchase orders placed by an ACES Participating Agency with Contract Holder directly or through ACES and any resulting contract between the CONTRACTOR and an ACES Participating Agency do not create any additional obligations on the part of ACES.
- C. For transactions which involve ACES transmitting purchase orders on behalf of an ACES Participating Agency to CONTRACTOR, ACES volunteers to act as a payment facilitator to make payments to CONTRACTOR with funds transferred to ACES by the ACES Participating Agency in accordance with the Participating Agency's written instructions and to provide an accounting of all monies paid or received by ACES pursuant to this Agreement. ACES also volunteers to provide informal mediation services between CONTRACTOR and ACES Participating Agency in the event any dispute arises between them.
- D. CONTRACTOR understands and agrees that upon ACES' receipt of funds from the ACES Participating Agency, ACES has no right or authority to thereafter apply those funds to any purpose other than as instructed by the ACES Participating Agency. ACES shall incur no liability to the CONTRACTOR except for liability arising from ACES' own gross negligence or willful misconduct to the extent allowed by New Mexico law. Through this procurement process and subsequent contract, CONTRACTOR is authorized to provide the described products or services. ACES has no obligation or right to involve itself with the manner or method by which CONTRACTOR provides the products or services.

- E. It is not the intent of the parties to this Agreement, nor shall this Agreement be interpreted to create a new or separate legal entity for the performance of this Agreement.
- F. Each party shall maintain its own respective records and documents associated with the Agreement in accordance with the records retention requirement applicable to public records or as otherwise specified in the contract documents.
- G. CONTRACTOR is responsible for the quality and delivery of the goods and services provided under the Agreement.

#### **4. SCOPE OF WORK**

- A. *Services Provided.* Services and/or items shall be provided as stated in the contract documents, including Attachment A.
- B. Under the terms and conditions of this Agreement an ACES Participating Agency as allowed by law may issue orders for items and/or services described herein. The terms and conditions of this contract shall form a part of each order issued hereunder. The items and/or services to be ordered shall be as listed herein and as otherwise quoted to the ACES Participating Agency by the CONTRACTOR in reference to this contract. All orders issued hereunder will bear both an order number and this ACES contract number. It is understood that no guarantee or warranty is made or implied by ACES or the user that any order for any definite quantity will be issued under this contract. The Vendor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order.
- C. ACES Participating Agencies may negotiate with the CONTRACTOR certain additional terms and conditions relating to the scope of services and other performance details. However, the pricing, terms and conditions of this contract may not be altered or amended except with the approval of ACES and in accordance with the State Procurement Code.
- D. *Compliance with Law/Policies.* ACES, CONTRACTOR and ACES Participating Agency shall adhere to all applicable state and federal laws, policies and regulations applicable to ACES or the ACES Participating Agency, including privacy, confidentiality, and security requirements.

#### **5. COMPENSATION**

- A. *Prices.* Prices as listed in this contract cannot be exceeded. CONTRACTOR and using agency may negotiate lower prices when, in agreement to do so.
- B. *Rate of Pay.* The ACES Participating Agency shall pay CONTRACTOR in full for services satisfactorily performed pursuant to this agreement. If the ACES Participating Agency finds that the services are not acceptable, it shall, within ten

(10) days after receipt of CONTRACTOR's invoice, provide to CONTRACTOR and ACES a letter of exception explaining the objection to the services along with details of how ACES may provide remediation action.

C. *Payment Procedure.* The ACES Participating Agency using this ACES contract shall provide a Purchase Order to ACES\* referencing the ACES Contract Number and a specific dollar amount or a "not to exceed amount" for the products and/or services to be ordered. It is recommended that the amount be based on written quote provided by the CONTRACTOR. The Purchase Order shall include the shipping address(s) of the ACES Participating Agency receiving the order. CONTRACTOR shall invoice ACES\* and ACES will invoice the ACES Participating Agency. ***Invoiced amounts shall include the ACES fee embedded in the cost of items/services and not listed separately on the invoice.*** Payments not received within 15 days of receipt of invoice shall be delinquent. Payments 15 days delinquent shall be assessed a 1.5% per month *administrative fee (Procurement Code 13-1-158 (c) NMSA 1978).* *The ACES Participating Agency agrees to these specific terms of payment. ACES will render payment to the CONTRACTOR\* after receipt of payment by the ACES Participating Agency, less the 1.5% ACES fee based on total invoice amount.*

\*Unless a waiver has been granted by ACES authorizing direct invoicing/payment between Contractor and the Participating Agency.

## 6. ORDERING AGENCY RESPONSIBILITY

Receipt, inspection, acceptance and payment for materials and services ordered under this Agreement shall be the exclusive obligation of the ACES Participating Agency.

A complete copy of the ACES contract relied upon for purchase shall be downloaded and kept by the ACES Participating Agency at the time of purchase for audit purposes.

ACES shall not be held liable for payments not made or late payments made by ACES Participating Agencies.

## 7. INSPECTION

Final inspection and acceptance will be made by the ACES Participating Agency at the destination. Supplies/items rejected at the destination for nonconformance with the terms and conditions of this contract shall be removed at the CONTRACTOR'S risk and expense, promptly after notice of rejection by the ACES Participating Agency. Services rejected for nonconformance with the terms and conditions of the contract and/or requirements of the order shall be corrected by the CONTRACTOR promptly after notice of rejection. Items or services not corrected after notice shall not be paid for pursuant to NM state law.

## **8. RESPONSIBILITY**

CONTRACTOR shall pay the assigned staff wages and benefits in accordance with its policies and all applicable state and federal laws. The CONTRACTOR shall withhold and transmit payroll taxes, provide unemployment insurance and workers' compensation benefits for the assigned staff. The CONTRACTOR represents that it has informed all assigned staff that they are not entitled to be paid by the ACES Participating Agency for holidays, vacations, disability benefits, insurance, pensions, or retirement plans, or any other benefits offered by the ACES Participating Agency to its employees.

ACES, the CONTRACTOR, and the ACES Participating Agency shall adhere to all applicable state and federal laws, policies, and regulations applicable to privacy, confidentiality, and security requirements and of all data during the term of this Agreement.

## **9. COOPERATION**

ACES, the CONTRACTOR, and the ACES Participating Agency agree to cooperate fully and to provide assistance to the other parties in the investigation and resolution of any complaints, claims, actions, or proceedings that may be brought or involve ACES Participating Agency staff or the CONTRACTOR staff under this Agreement.

## **10. AGENCY FURNISHED PROPERTY**

Any agency furnished property owned by the ACES Participating Agency shall be returned to the agency upon request or otherwise at the end of the contract term, in the same condition as received except for ordinary wear, tear and modifications order through this contract.

## **11. NON-SOLICITATION**

During the term of this Agreement and for a period of one (1) year immediately following the expiration or termination of this Agreement, the ACES Participating Agency shall not hire, solicit for employment, or engage any employee of the CONTRACTOR that has provided services to the ACES Participating Agency under this Agreement.

## **12. AMENDMENT**

This Agreement may be amended, changed, or altered only in writing by an instrument executed by ACES and the CONTRACTOR. All fully executed amendments are effective as of the last date signed.

## **13. MERGER**

This Agreement incorporates all such covenants, agreements and understandings, including ACES ITB 22-001 and the CONTRACTOR'S responding bid as awarded or

as otherwise amended through change order, hereto concerning the subject matter hereof have been merged into this written Agreement. No prior agreements or understandings, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement, with the exception of any properly authorized purchase order for services that pre-date the execution of this Agreement.

#### **14. APPROPRIATIONS AND CONTINUATION OF CHARTER**

- A. *Funding.* Pursuant to 13-1-152, NMSA, 1978, this Agreement is contingent upon sufficient appropriations and authorizations being made to or by the ACES Participating Agency for the performance of this Agreement under a multi-term agreement with the Contractor. If sufficient appropriations and authorizations are not made in any subsequent fiscal period following the initial term of a multi-term agreement with the Contractor, the Participating Agency shall provide (at a minimum) 30 days' notice to the Contractor. The Agreement shall terminate on the first day of the next fiscal period, or upon the 31<sup>st</sup> day after written notice is given if less than 30 days to the next fiscal period. The ACES Participating Agency's decision as to whether sufficient appropriations are available shall be accepted by the CONTRACTOR and shall be final. The Participating Agency agrees to provide their best effort to ensure continued funding for the entire term.
  
- B. *Charter Continuation.* When applicable, this Agreement is contingent upon the continuation of the ACES Member Charter. If the charter is revoked during the term of this Agreement, the Agreement shall terminate immediately upon written notice of such by the ACES Participating Agency to ACES and CONTRACTOR.

#### **15. INSURANCE**

CONTRACTOR shall provide proof of Insurance as set forth in ITB 22-001. Inadequate insurance or inadequate proof of insurance may be cause for termination of this Agreement. A certificate of insurance shall be provided, if required, to ACES on or before the effective date of this Agreement and annually at renewal when applicable.

#### **16. SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### **17. APPLICABLE LAW**

The laws of the State of New Mexico shall govern this Agreement.

#### **18. ASSIGNMENT and SUBSTITUTION**

ACES or CONTRACTOR shall not assign or transfer any interest in the Agreement or

assign any claims for money due or to become due under this Agreement without prior written approval of the ACES Participating Agency.

## **19. PURCHASE OF GOODS AND SERVICES**

The ACES Participating Agency may issue an order for goods and/or services as set forth in this contract. The procurement of goods and services subject to this Agreement shall be conducted in accordance with and subject to the relevant statutes, ordinances, rules, and regulations that govern each party's procurement practices.

## **20. CONFIDENTIALITY**

Any confidential information provided to or developed by CONTRACTOR or ACES or its employees in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization without the prior written approval of the ACES Participating Agency, except as provided in the New Mexico Inspection of Public Records Act. ACES agrees to comply with all federal and state privacy laws relating to records and information maintained by the ACES Participating Agency, including, but not limited to Family Educational Records Privacy Act.

## **21. CONFLICT OF INTEREST**

CONTRACTOR, ACES and the ACES Participating Agency warrants respectfully that they do not have an interest and 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. The CONTRACTOR, ACES, and the ACES Participating Agency, certifies that it and its employees have complied with and will continue to comply with the requirements of the Governmental Conduct Act, NMSA, 1978 §§10-16-1 *et seq.* or any other applicable conflict of interest provisions.

## **22. PENALTIES**

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. All parties agree to not participate in unlawful use of this Agreement.

## **23. EQUAL OPPORTUNITY COMPLIANCE**

The CONTRACTOR, ACES and the ACES Participating Agency, agree to abide by all federal and state laws and rules and regulations, and the 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, CONTRACTOR, ACES and the ACES Participating Agency agree to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, 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 the CONTRACTOR, ACES or the ACES Participating Agency is found not to be in compliance with these requirements during

the life of this Agreement, they agree to take appropriate steps to correct these deficiencies.

## **24. 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 ACES, ACES Participating Agency, the State Department of Finance and Administration and the State Auditor. The ACES Participating Agency and ACES shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the ACES Participating Agency and ACES to recover excessive or illegal payments.

## **25. INDEMNIFICATION**

Any liability incurred in connection with this Agreement shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, §§ 41-4-1 et seq, NMSA 1978, as amended. To the extent permitted by law, the parties shall defend, indemnify and hold harmless the others from all actions, proceedings, claims, demands, costs, damages, unpaid taxes and associated penalties and interest, 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 party's negligent act or failure to act, or if caused by the actions of the party's employees, subcontractors, or agents resulting in injury or damage to persons, property of the other party's financial interests during the time when the CONTRACTOR or any employee, agent, 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 CONTRACTOR employee, agent or subcontractor of ACES under this Agreement is brought against ACES, CONTRACTOR or the ACES Participating Agency, the notified party shall, as soon as practical, but no later than two (2) days after he/she/it receives notice thereof, notify the other Parties and their legal counsel by email and certified mail.

## **26. NOTICES.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, or by certified, return receipt requested U.S.P.S. either by first class or certified mail as follows (unless delivery by email is agreed to):

### **ACES**

Christy Takacs, Executive Director  
P.O. Box 16326  
Albuquerque, NM 87191

### **CONTRACTOR**

(Specified under paragraph 29 of this agreement)

The ACES Participating Agency shall be given notice to the individual who signed the ACES Member JPA and/or Participating Agency Agreement.

**27. AUTHORITY**

Each party signing below represents that they have all required authority to execute this Agreement.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers. This Agreement may be executed in several counterparts and each executed counterpart shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

**ACES**

By: Christy Takacs

Signature: Christy Takacs  
Christy Takacs (Jul 29, 2024 13:40 MDT)

Title: Executive Director

Date: 07/29/2024

**CONTRACTOR**

By: Eric Tafoya  
Printed Name

Signature: Eric Tafoya  
Eric Tafoya (Jul 28, 2024 20:58 MDT)

Title: Owner

Date: 07/28/2024

Mailing Address:

Pi Box 46196 Rio Rancho NM 87174  
\_\_\_\_\_  
\_\_\_\_\_

Leave blank if not applicable -

\_\_\_\_\_ I hereby agree to receive notice by email at the following address instead of by USPS mail:

\_\_\_\_\_



## ATTACHMENT A

**CONTRACTOR: XENERGY MECHANICAL LLC.**

**1.1. Scope of Services available:**

HVAC, Refrigeration, Plumbing and Electrical Services

**1.2. Timeframe.**

November 22, 2022, through June 30, 2026  
(Subject to annual renewal and unless otherwise terminated)

**1.3. Pricing.**

See attached pricing sheet and contact vendor for a project specific price quote.

**1.4. Payment.**

**1.4.1. Payment Terms:** Net 30 (ACES to Contractor); Net 15 (Participating Agency to ACES)

**1.4.2. Payment Requests.**

(This section does not apply to Contractors who have been granted an ACES waiver allowing direct invoicing/payment.)

**1.4.2.1.** Payment requests/invoices shall be sent to ACES Business Office by email at [businessoffice@nmaces.org](mailto:businessoffice@nmaces.org) (preferred) or by mail to P.O. Box 16326, Albuquerque, NM 87191.

**1.4.2.2.** The Contractor shall furnish an original invoice with the ACES Purchase Order Number clearly indicated on each invoice.

**1.4.2.3.** ACES will bill the Participating Agency and will remit payment to Contractor after receipt of payment from Participating Agency, less 1.5% ACES fee.

**1.4.3. Payment Dispute.** An invoice may not be processed if there is a dispute between ACES or the ACES Participating Agency and the Contractor as to the services or items provided and included on the invoice. Payment will be made after, and according to, dispute resolution achieved between the parties.

# PRICING SHEET

ITB #22-001 - ON-CALL AND PREVENTATIVE MAINTENANCE FACILITIES SERVICES											
VENDOR	HVAC	Hourly Rate	Refrigeration	Hourly Rate	Plumbing	Hourly Rate	Electrical	Hourly Rate	Additional Costs	Hourly Rate	Discounts
<b>B&amp;D Industries</b>	Journeyman	\$ 81.00	Journeyman	\$ 81.00	Journeyman	\$ 81.00	Journeyman	\$ 81.00	Data Technical	\$ 81.00	15% off MSRP
	Apprentice	\$ 57.00	Apprentice	\$ 57.00	Apprentice	\$ 57.00	Apprentice	\$ 57.00	Apprentice	\$ 57.00	
	Other	\$ 57.00	Other	\$ 57.00	Other	\$ 57.00	Other	\$ 57.00			
<b>CAC, Inc.</b>	Journeyman	\$ 80.00	Journeyman	\$ 80.00	Journeyman		Journeyman		Trip Charge	\$ 40.00	
	Apprentice		Apprentice		Apprentice		Apprentice		Subcontractors	Cost Plus 20%	
	Other		Other		Other		Other				
<b>Donner</b>	Journeyman	\$ 110.00	Journeyman	\$ 110.00	Journeyman	\$ 110.00	Journeyman		Donner Equipment	Comparable Rate	Cost Plus 15%
	Apprentice	\$ 75.00	Apprentice	\$ 75.00	Apprentice	\$ 75.00	Apprentice		Weekly Non-Standard Hrs	\$ 165.00	
	Other	\$ 55.00	Other	\$ 55.00	Other	\$ 55.00	Other		Weekend/Holiday Non-Standard Hrs	\$ 220.00	
<b>Frisbie Heating &amp; Cooling</b>	Journeyman	\$ 110.00	Journeyman	\$ 110.00	Journeyman		Journeyman	\$ 110.00	Additional Laborer w/Journeyman	\$ 45.00	
	Apprentice		Apprentice		Apprentice		Apprentice				
	Other		Other		Other		Other				
<b>PC Automated Controls</b>	Journeyman	\$ 129.00	Journeyman	\$ 129.00	Journeyman		Journeyman	\$ 129.00	Digital Controls Sys	\$ 165.00	10% off list price
	Apprentice	\$ 105.00	Apprentice	\$ 105.00	Apprentice		Apprentice	\$ 105.00	Project Mgt	\$ 165.00	
	Other		Other		Other		Other		Testing/Balancing	\$ 165.00	
<b>TLC Inc</b>	Journeyman	\$ 108.00	Journeyman	\$ 108.00	Journeyman	\$ 108.00	Journeyman	\$ 108.00	Journeyman	\$ 25.00	
	Apprentice	\$ 65.00	Apprentice	\$ 65.00	Apprentice	\$ 65.00	Apprentice	\$ 65.00	Helper	\$ 17.00	
	Other		Other		Other		Other				
<b>Xenergy Mechanical</b>	Journeyman	\$ 100.00	Journeyman	\$ 100.00	Journeyman	\$ 100.00	Journeyman	\$ 100.00	Subcontractor Markup	30% Total Cost	
	Apprentice	\$ 75.00	Apprentice	\$ 75.00	Apprentice	\$ 75.00	Apprentice	\$ 80.00	Equipment Rental Markup	10% Total Cost	
	Other (overtime)	\$ 150.00	Other (overtime)	\$ 150.00	Other (overtime)	\$ 150.00	Other				
<b>Yearout</b>	Journeyman	\$ 101.65	Journeyman	\$ 101.65	Journeyman	\$ 101.65	Journeyman		Subcontractors	15%	15% off MSRP
	Apprentice	\$ 96.50	Apprentice	\$ 96.50	Apprentice	\$ 96.50	Apprentice		Equipment Rental/Crane	15%	
	Other		Other		Other		Other				