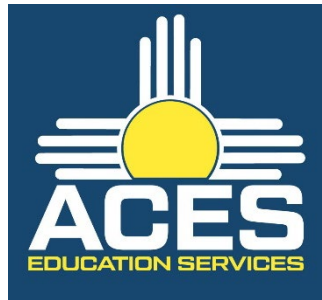


**NEW MEXICO
ASSOCIATION OF CHARTER SCHOOLS EDUCATION SERVICES**



**AGENCY AGREEMENT AND
INCORPORATING CONTRACT**

ACES Contract Number: 25-01

Commodity: MARKETING AND/OR DATA ANALYTICS SERVICES

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

CONTRACT TERM (subject to annual renewal):
March 14, 2025 through March 14, 2029

Number of awards: 6

CONTRACTORS:

Scope A: Marketing
Agenda, LLC
Carroll Strategies
KRQE Media Group
Schola, Inc.

Scope B: Data Analytics
MC2 Education
Topminnow

ACES approved by:

Date: 03/14/2025

A handwritten signature in blue ink, appearing to read "Christy Takacs".

Christy Takacs
Executive Director, Chief Procurement Officer

Table of Contents

INSTRUCTIONS FOR ACES PARTICIPATING AGENCIES	3
INSTRUCTIONS FOR CONTRACTORS	4
AWARDED CONTRACTORS	5-7
AGREEMENT	8
ATTACHMENT A	18
ATTACHMENT B	20
ATTACHMENT C	21

INSTRUCTIONS FOR ACES PARTICIPATING 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

For questions regarding purchase orders, invoices or payments:

Katherine Moore, Business Manager
575-468-ACES (2237) ext. 101
Email: 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

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 CORRESPONDING ACES **CONTRACT NUMBER AND COMMODITY TITLE** FOUND ON THE FIRST PAGE OF THIS AGREEMENT DOCUMENT, THE **CONTRACTOR'S NAME** AND A **VERY BRIEF SUMMARY DESCRIPTION** OF WHAT IS BEING ORDERED. If the Contractor requires a secondary contract or signed written quote (ref. Attachment A section 1.2) please include a fully executed copy of that document with the Purchase Order when sending to ACES business office.
- ✓ PURCHASE ORDERS SHALL BE SENT TO ACES BY EMAIL AT: businessoffice@nmaces.org. (If the Contractor has been granted a direct billing waiver [not common] the PO shall be sent to the Contractor instead of ACES and a copy of the PO shall be sent to ACES.)
- ✓ INCLUDE WITH THE PURCHASE ORDER OR EMAIL SEPARATELY A COPY OF A SIGNED QUOTE, SERVICES AGREEMENT OR OTHER DOCUMENT REQUIRED OR PROVIDED BY THE CONTRACTOR WITH A DESCRIPTION OF THE SCOPE OF WORK AND/OR ITEMS TO BE PROVIDED, AND ANY TERMS AND CONDITIONS **(IF APPLICABLE)**.
- ✓ PAYMENT SHALL BE MADE TO ACES **WITHIN 15 DAYS** AFTER RECEIPT OF ACES INVOICE, SO THAT ACES CAN RENDER PAYMENT TO THE CONTRACTOR WITHIN 30 DAYS OF INVOICE. ANY PAYMENT MADE MORE THAN 45 DAYS AFTER INVOICE DATE WILL BE SUBJECT TO LATE FEES AS SET FORTH IN 13-1- 158 NMSA 1978.

**FAILURE TO DO ANY OF THE ABOVE MAY CONSTITUTE FAILURE TO COMPLY WITH NEW MEXICO
PROCUREMENT CODE AND/OR COULD BE CAUSE FOR AUDIT FINDING.
PLEASE CONTACT ACES IF YOU HAVE QUESTIONS.**

INSTRUCTIONS 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

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

For questions regarding purchase orders, invoices or payments:

Katherine Moore, Business Manager
575-468-ACES (2237) ext. 101
Email: 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 RECEIPT 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 DIRECT BILLING WAIVER HAS BEEN GRANTED BY ACES

- ✓ 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 ACES PARTICIPATING AGENCY
- DATE(S) OF SERVICE (IF APPLICABLE)

- ✓ INVOICES SHALL BE SENT TO ACES BY EMAIL TO: businessoffice@nmaces.org

CONTRACTOR CONTACT INFORMATION



NAME: Agenda, LLC

ADDRESS: 1715 5TH Street NW, Albuquerque, NM 87102

PRIMARY CONTACT: Emily Kochalka

PHONE: 817-505-8072

EMAIL: ekochalka@agenda-global.com

GENERAL EMAIL: office@agenda-global.com

WEB ADDRESS: www.agenda-global.com

STANDARD BUSINESS HOURS: M-F 9AM to 5PM MT

SERVICE AREA(S): NM Statewide

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 RFP 25-01, and

WHEREAS the parties agree that it is desirable to participate in the cooperative procurement of, or use of an established price agreement for MARKETING AND/OR DATA ANALYTICS 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 MARKETING AND/OR DATA ANALYTICS SERVICES 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 DATA AND ANALYTICS 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:

- RFP 25-01 document with all addenda
- CONTRACTOR'S response to RFP 25-01 as amended and/or otherwise negotiated and 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 RFP 25-01 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 **March 14, 2025**, and shall remain in effect until **March 14, 2029**, unless ACES exercises the right of non-renewal during any subsequent term, or unless termination otherwise occurs by either party.
- 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 for cause or convenience by an ACES Participating Agency with a minimum of 10 days written notice to the CONTRACTOR; may be terminated for cause by ACES with a minimum of 30 days written notice to the CONTRACTOR; may be terminated with or without written notice upon mutual agreement of both the Participating Agency and CONTRACTOR at any time, or may be terminated by the CONTRACTOR with at least thirty (30) days written notice to ACES and the appropriate ACES Participating Agency.

Immediate termination may only occur if determined necessary in writing by the Participating Agency and approved by ACES. Such shall be based on either egregious non-performance or cause by the CONTRACTOR, or severe, emergency or uncontrollable circumstances on behalf of the Participating Agency.

Prior to exercising any termination, the Participating Agency is responsible for documenting and notifying the CONTRACTOR of any issue(s) regarding service and allowing the CONTRACTOR a reasonable opportunity to remedy the issue(s) prior to termination. This provision is not exclusive and does not waive each party's other legal rights and remedies caused by the ACES Participating Agency,

ACES or the CONTRACTOR for default/breach of this agreement. In terminating, neither party may nullify obligations already incurred for performance or fail to perform professionally prior to the date of termination.

- 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 and as otherwise negotiated and agreed to between the CONTRACTOR and ACES Participating Agency for a specific scope of work.
- 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 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, if listed in this contract, cannot be exceeded. CONTRACTOR and using agency may negotiate lower prices where 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 RFP 25-02 and the CONTRACTOR'S responding Proposal as awarded or as otherwise amended, 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 31st 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 RFP 25-02. 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 a valid purchase order for goods and/or services as set forth in this contract. The purchase order shall reference the number and title of the contract and the selected Contractor's name. 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 27 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: 

Title: Executive Director

Date: 03/25/2025

CONTRACTOR

By: Chris Taylor
Printed Name

Signature:  Chris Taylor (Mar 25, 2025 16:12 MDT)

Title: COO

Date: 03/25/2025

Mailing Address:

1715 5th St, STE A

Albuquerque, NM 87102

ACES prefers to send all communications under this contract via designated email. Please indicate below if you agree to communicate using this method (optional).

CT
CT I hereby agree to receive communications and notices by email at the following email address instead of through USPS mail:

ctaylor@agenda-global.com
Preferred Email Address

ATTACHMENT A

CONTRACTOR: AGENDA LLC

1.1. Scope of Services available:

Agenda is fully mobilized to deliver on a wide range of marketing services, including digital marketing, marketing services, advertising, social media, public relations, online marketing, branding/brand development, video production, graphic design and/or web site design and development. Key elements include:

- Social media management including building a following with high-quality original content.
- Development of strategic messaging and narratives tied to target audience analyses and baselines.
- Tracking user engagement and intensity, and ongoing security monitoring.
- Creating original and compelling graphic elements and editorial content for social media marketing.
- Preparing media strategies, monthly marketing calendars, and other marketing frameworks.
- Collaboratively working with internal stakeholders to deliver timely and relevant updates, including analytics, outcomes, and recommendations.
- Managing owned social media channels to monitor reputation.
- Delivering social account security monitoring to decrease the risk of hackers.
- Providing insight and analytics as needed for marketing purposes.
- Developing, distributing, and/or coordinating marketing using flyers, invitations, ads, banners, billboards, television and/or radio.

1.2. Separate/Secondary Service Contract

Agenda LLC requires a Consulting Agreement to be approved and signed by the ACES Participating Agency setting forth the specific negotiated and/or accepted scope of work specific to the requesting Participating Agency. A sample of the Consulting Agreement has been included as Attachment C to this contract. A copy of the fully executed Consulting Agreement shall be included with the Purchase Order when it is sent to ACES.

1.3. Pricing.

See Attachment B for rates and contact Agenda LLC directly to obtain a written quote for cost based on specific scope of work.

Continued on next page

Payment.

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

1.3.2. Payment Requests.

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

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

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

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

1.3.3. 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.

ATTACHMENT B

STATE OF NM LABOR RATES

Principal	\$335.01
Senior Company Management	\$239.29
Managing Director	\$191.44
Director	\$143.58
Associate Director	\$119.65
Administrative Project Support	\$71.79
Graphic Design	\$143.58
Art Direction	\$191.44
Video Editor	\$263.22
Functional Specialist I	\$71.79
Functional Specialist II	\$119.65
Functional Specialist III	\$191.44
Subject Matter Expert I	\$215.37
Subject Matter Expert II	\$263.22
Subject Matter Expert III	\$311.08
Instructional Designer	\$95.72
Senior Instructional Designer	\$143.58
Instructional Facilitator	\$76.57
Sr. Instructional Facilitator	\$90.93
Training Coordinator	\$52.64
Multimedia Specialist I	\$71.79
Multimedia Specialist II	\$119.65
Executive Strategic Advisor	\$470.00

ATTACHMENT C

SAMPLE CONTRACT



CONSULTING AGREEMENT

THIS AGREEMENT is made and entered into by and between Agenda, LLC ("Agenda") and **<insert client name>** ("Client").

WHEREAS, Agenda is in the business of providing general consulting, public relations and strategic counsel and desires to be retained by Client; and

WHEREAS, Client desires to retain Agenda for the purposes of providing general consulting, public affairs, strategic counsel and communications.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Term of retainment.** Retainment shall commence on **<insert start date>** and shall continue through **<insert end date – must be last day of month>**. Thereafter, retainment shall automatically continue on a month-to-month basis until terminated by either party upon giving thirty 30 days written notice to the other party, on or before the commencement date of the month-to-month period, and subject to the provisions of Article 5 set forth below. Notwithstanding, Agenda reserves the right to suspend all services if Client's account is more than thirty (30) days past due.
2. **Duties of Agenda.** In accepting retainment by Client, Agenda shall undertake and assume the responsibility of performing for and on behalf of Client all duties and responsibilities that are reasonably necessary to fulfill the purposes of this Agreement as set forth herein.
3. **Duties of Client.** Client covenants and agrees to comply with all reasonable demands or requests of Agenda to cooperate in the efforts employed by Agenda. This includes, but is not limited to, providing documents and information at the request of Agenda, ensuring that Agenda receives all appropriate project information, and providing access to all relevant project meetings and briefings.
4. **Scope and Consideration from Client.** Agenda agrees to perform the work as outlined below and Client agrees to pay the consideration in accordance with the schedule below:

A. Insert Client Scope of Services

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- Fees – Insert Client Fee Schedule

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B. Expenses and Payment Terms:

Client agrees to pay Agenda, upon receipt of billings, for all quoted expenses associated with Agenda's duties under this Agreement, including, but not limited to, out-sourced graphics design, production costs, printing costs, color prints, photographs, photography services, media clips, scans, bulk mailing costs, video and sound production, etc.

Client further agrees to reimburse Agenda, upon receipt of billing, for approved out of town travel and travel related costs in connection with Agenda's duties under this Agreement.

Applicable New Mexico State gross receipts taxes, or other applicable user taxes, shall be applied to all fees and costs. The tax rates may be adjusted by the state on a semi-annual, or other scheduled basis, therefore applicable taxes may change during the duration of this Agreement.

Payment terms are Net due 15 days from invoice mailing. Payment should be made by check to Agenda, LLC (Federal I.D. #90-0784529) at 400 Gold Ave. SW Suite 1200, Albuquerque, NM 87102. Past due accounts are subject to interest at the rate of 1.5% (One and one-half percent) per month. Past due charges will commence 15 days after invoice mailing date and will continue until paid.

Client's billing information is as follows:

Phone: _____ Fax: _____
Email: _____

The provisions of this Agreement do not in any way preclude Agenda from receiving compensation or consideration from other sources or from engaging in similar types of work for other clients or entities not in direct conflict with Client. Agenda shall confer and resolve with client any questions of potential conflict.



5. **Consideration upon Termination.** If either party terminates this Agreement, in accordance with Article 1, above, Agenda shall be entitled to one hundred percent (100%) of the fees, costs, and expenses actually incurred including, but not limited to, any fees due for media buys incurred on behalf of client. In addition, Client is entitled to be refunded any monies for unused portions of the program.
6. **Working Facilities and Expenses.** Agenda shall have reasonable access to Client's office facilities, staff, materials, etc., upon request with no charge to Agenda.
7. **Indemnification.** Client agrees to indemnify Agenda and to hold Agenda harmless for any and all expenses incurred by Agenda in furtherance of the purposes of this Agreement. In addition, Client agrees to indemnify, save harmless, and release Agenda, and all of its officers, agents, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Agreement which are caused in whole or in part by Client's officers, agents, volunteers, or employees. Client agrees to pay Agenda for all fees and costs in advance should Agenda be required to respond to any such claims.
8. **Intellectual Property.** Any and all intellectual property arising in connection with the services performed under this Agreement, including, without limitation, ideas, concepts, discoveries, improvements, processes, formulas, data, know-how, information statements, press releases, letters, documents, advertising copy, instructions, technology and other intellectual property, shall be owned solely by Agenda unless and until such intellectual property is paid in full by Client. Client shall not use such intellectual property unless and until such property has been approved and paid for by Client in connection with this Agreement.

Notwithstanding any other provision of this Agreement or the prior executed Agreements, Agenda shall have, and Client hereby grants to Agenda, a nonexclusive permission to: (i) retain a copy of all deliverables produced for or delivered to Client hereunder, and (ii) use, reproduce, refer to display and perform portions thereof for Agenda's marketing and promotional purposes. It is understood that legal remedies may be not sufficient in the event of breach or potential breach of this section, and Agenda may seek injunctive or other equitable relief in the event of breach or potential breach of this section. In such event, Client shall pay the Agenda's costs and expenses, including attorney's fees, incurred in connection with enforcing the terms and conditions of this section.



9. **Limitation of Liability.** Agenda's liability on any claim of any kind brought by client, whether based on negligence, warranty or otherwise, for any loss or damage arising out of, connected with or resulting from this Agreement or from the performance or breach thereof or from the use of any services furnished pursuant to this Agreement shall in no case exceed the price allocated to the service or material which gives rise to the claim. In no event shall Agenda be liable for special, incidental or consequential damages.

In addition, Client's liability on any claim of any kind brought by Agenda, whether based on negligence, warranty or otherwise, for any loss or damage arising out of, connected with or resulting from this Agreement or from the performance or breach thereof or from the use of any services furnished pursuant to this Agreement shall in no case exceed the price allocated to the service or material which gives rise to the claim. In no event shall Client be liable for special, incidental or consequential damages.

10. **Mutual Non-Disclosure.** During or at any time after termination of retainment hereunder, Agenda/Client will not, without express written authorization by the other, disclose to or use for the benefit of any person, corporation or other entity any files, trade secrets or other confidential information concerning the business, clients, methods, operations, financing or services of Agenda/Client. "Trade secrets" or "confidential information" shall mean information not generally known in the community as disclosed to Agenda/Client or known by it as the consequence of this working relationship, whether or not pursuant to this Agreement, regardless of whether or not Agenda/Client aided and/or was solely responsible for the gathering or compilation of this information or methods.
11. **Injunctive Relief.** Agenda/Client recognizes that irreparable damage will result to Agenda/Client if either party fails or refuses to perform any obligation under this Agreement, and that the remedy at law for any such failure or refusal will be inadequate. Accordingly, in addition to any other remedies and damages available, Agenda/Client shall be entitled to injunctive relief, and Agenda/Client may be specifically compelled to perform their obligations under this Agreement.
12. **Burden and Benefit.** This Agreement shall be binding upon, and shall inure to the benefit of Agenda and Client, and their respective heirs, personal and legal representatives, successors and assigns.



13. **Severability.** The invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity and enforceability of the other provisions.
14. **Governing Law.** The laws of the State of New Mexico shall govern the construction and interpretation of this Agreement.
15. **Attorneys Fees.** In the event of litigation, each party shall be responsible for their own attorney fees. The prevailing party to any litigation brought to enforce any provision of this Agreement shall be awarded its costs and attorneys fees.
16. **Hiring or Solicitation of Employees** In consideration of this Agreement, Client agrees that, during the term of this Agreement and for a period of one (1) year following the date of termination of this Agreement, Client will not employ, or solicit for employment, any individual who was an employee or member of Agenda at any time during the term of this Agreement or the one year period following the term of this Agreement. Consent to employment or solicitation of employees may be granted or withheld in the absolute and sole discretion of Agenda.

In the event of a breach of this Agreement regarding the solicitation or hiring of employees, because the damages arising by reason of such breach cannot be reasonably or adequately measured, Client shall pay Agenda as liquidated damages, an amount equal to one hundred percent (100%) of the annual gross salary or wages (on an annualized basis) for the employee who is the subject of the breach for the twelve (12) month period immediately preceding the date of the breach of this Agreement. Such amount shall be paid within thirty (30) days following the date of such breach. Both parties agree that the liquidated damages provided for in this paragraph are a reasonable estimate of the losses that both parties agree will result from breach of this paragraph.

17. **Entire Agreement.** This Agreement contains the entire agreement and understanding by and between Agenda and Client with respect to the retainment of Agenda, and no representations, promises, agreements or understandings, either written or oral, not contained herein shall be of any force or effect. No change or modification of this Agreement shall be valid or binding unless it is in writing and signed by the party intended to be bound. No waiver of any provision of this Agreement at any time shall be deemed a waiver of any other provision of this Agreement at such time or at any other time.

SAMPLE CONTRACT (continued)

agenda.

AGENDA, LLC

By _____
<insert name>

Dated: _____

<INSERT NAME>

By _____
<insert name>

Dated: _____