

**STATE OF NEW MEXICO
AUDIT CONTRACT**

This CONTRACT is made and entered into this _____ day of _____, 2010, by and between the _____ hereinafter referred to as the “Agency”, and _____ hereinafter referred to as the “Contractor”, and is effective as of the date upon which it is approved by the State Auditor.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. SCOPE OF WORK (Include in Paragraph 25 any expansion of scope)

- A. The Contractor shall conduct a financial and compliance audit of the college or university using the business-type activity model consisting of the Statement of Net Assets; Statement of Revenues, Expenses, and Changes in Net Assets; Statement of Cash Flows; and budget comparison schedules presented in the format required by Section 2.2.212(E)(2) NMAC for the period from **July 1, 2009 through June 30, 2010**.
- B. The audit scope requires the Contractor to provide an opinion on the budget comparison schedules (see AAG-SLV 14.53 and the requirements of Section 2.2.2.12(E)(2) NMAC). A SAS 29 opinion on the budget comparison does not meet this requirement.
- C. The Contractor shall apply certain limited procedures to the Management Discussion and Analysis (MD&A) and report deficiencies in or the omission of required information in accordance with the requirements of SAS AU 558.06 through .08.
- D. The audit shall be conducted in accordance with auditing standards generally accepted in the United States, *Government Auditing Standards*, OMB Circular A-133, and *Requirements for Contracting and Conducting Governmental Audits* (2.2.2 NMAC).

2. DELIVERY AND REPRODUCTION

- A. In order to meet the delivery terms of this Contract, the Contractor shall deliver the following documents to the Office of the State Auditor, hereinafter referred to as “State Auditor,” on or before _____ and in accordance with 2.2.2.9 NMAC:
 - (1) an organized, bound and paginated hard copy of the Agency’s audit report for review;
 - (2) a copy of the dated and signed engagement letter required by Section 2.2.2.8(L) NMAC if not previously submitted;

- (3) a copy of the signed management representation letter required by SAS 85;
 - (4) a list of the passed adjustments required by SAS 89; and
 - (5) a copy of the completed State Auditor Report Review Guide available at www.osanm.org.
- B. For purposes of 2.2.2 NMAC, reports postmarked by the Agency's due date provided in Section 2.2.2.9(A) NMAC will be considered received by the due date provided in that section. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor and the State Auditor may take action in accordance with Subsection C of 2.2.2.13 NMAC. If copies of the engagement letter, management representation letter, list of past adjustments and the completed Report Review Guide are not received by the State Auditor with the audit report or prior to submittal of the audit report, the report will not be considered submitted to the State Auditor.
- C. As soon as the Contractor becomes aware that circumstances exist that will make the Agency's audit report late, the Contractor shall immediately provide written notification of the situation to the State Auditor. The notification shall include an explanation regarding why the audit report will be late and a concurring signature by the Agency. The Agency's oversight agency should also be notified, but confidential audit information shall be omitted from that notification.
- D. Pursuant to Section 2.2.2.8(L) NMAC, the Contractor shall prepare a written and dated engagement letter which identifies the specific responsibilities of the Contractor and the Agency. The Contractor shall submit to the State Auditor a copy of the signed and dated engagement letter and a list of client prepared documents with expected delivery dates within ten (10) days of the entrance conference.
- E. After its review of the audit report pursuant to 2.2.2.13 NMAC, the State Auditor will authorize the Contractor to print and submit the final audit report. Within two business days from the date of the authorization to print and submit the final audit report, the Contractor shall provide the State Auditor with _____ copies of the report and an electronic version of the audit report, in PDF format. After the State Auditor officially releases the audit report by issuance of a release letter, the Contractor shall deliver _____ copies of the audit report to the Agency. Every member of the Agency's governing authority shall receive a copy of the report.
- F. The Agency, upon delivery of its audit report, shall submit the required copies of the data collection form, audit report and corrective action plan to the federal clearinghouse designated by the Office of Management and Budget and each federal awarding agency if the schedule of findings and questioned costs disclose audit findings directly related to federal awards.

3. COMPENSATION

A. The total amount payable by the Agency to the Contractor under this agreement, including New Mexico gross receipts tax, shall not exceed _____

B. Total Compensation will consist of the following:

SERVICES	AMOUNTS
(1) Financial statement audit	
(2) Federal single audit	
(3) Financial statement preparation	
(4) Other nonaudit services, such as depreciation schedule updates	
(5) Other (i.e., component units)	

Gross Receipts Tax = _____

Total Compensation = _____

C. The Agency shall pay the Contractor the New Mexico gross receipts tax levied on the amounts payable under this agreement and invoiced by the Contractor.

D. Pursuant to Section 12-6-14 NMSA 1978 and the corresponding rule, Section 2.2.2.8(I), the State Auditor may authorize progress payments to the Contractor by the Agency; provided that the authorization is based upon evidence of the percentage of audit work completed as of the date of the request for partial payment. Progress payments up to 69% do not require State Auditor approval, provided that the Agency certifies receipt of services. The Agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed prior to making the 69% payment. Progress payments from 70% to 90% require State Auditor approval after being approved by the Agency. If requested by the State Auditor, the Agency shall provide a copy of the approved progress billings. The State Auditor may allow only the first 50% of progress payments to be made without State Auditor approval if the Contractor's previous audits were submitted after the due date. Final payment for services rendered by the Contractor shall not be made until a determination and written finding is made by the State Auditor in the release letter that the audit has been made in a competent manner in accordance with the provisions of this Contract and applicable rules of the State Auditor.

4. TERM

A. THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE AUDITOR. Unless terminated pursuant to Paragraphs 5 or 19, infra, this Contract shall terminate one calendar year after the date on which it is signed by the State Auditor.

- B. If awarded based on a multi-year proposal, this Contract may be extended by the parties for two successive one-year terms at the same price, terms and conditions as stated in the original proposal. Each annual extension of the contract shall be executed by mutual agreement of the parties and approval of the State Auditor pursuant to Section 2.2.2.8(B)(4) NMAC.

5. TERMINATION, BREACH AND REMEDIES

- A. This Contract may be terminated, without cause, by either of the parties upon written notice delivered to the other party at least ten (10) days prior to the intended date of termination. This Contract may be terminated immediately by either of the parties upon written notice delivered to the other party if a material breach of any of the terms of this Contract occurs. Unjustified failure to deliver the audit report in accordance with Paragraph 2, supra, shall constitute a material breach of this Contract. The Agency may immediately terminate this Contract upon written notice to the Contractor pursuant to Paragraph 19, infra. Pursuant to Section 2.2.2.8(N), the State Auditor also may immediately terminate this Contract upon written notice to the Contractor after determining that the audit has been unduly delayed, or for any other reason. By termination pursuant to this Paragraph, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS CONTRACT.*
- B. If the Agency terminates this Contract under this paragraph, the Contractor shall be entitled to compensation for work performed prior to termination in the amount of earned, but not yet paid, progress payments, if any, that the State Auditor has authorized as provided in Paragraph 3(D), supra. If the Contractor terminates this Contract under this paragraph, the Contractor shall repay to the Agency the full amount of any progress payments for work performed under the terms of this Contract.
- C. If the Agency or the Contractor terminates this Contract pursuant to this paragraph, the party that terminates the Contract shall immediately send the State Auditor written notice of the termination.
- D. The State Auditor may disqualify the Contractor from eligibility to contract for audit services with the State of New Mexico if the Contractor knowingly makes false statements, false assurances or false disclosures under this Contract. The State Auditor on behalf of the Agency or the Agency may bring a civil action for damages or any other relief against a Contractor for a material breach of this Contract.

6. STATUS OF CONTRACTOR

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. 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 Agency as a result of this Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed under this Contract 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 Contract or assign any claims for money due or to become due under this Contract.

8. **SUBCONTRACTING**

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the Agency and the State Auditor. An agreement between the Contractor and a subcontractor to subcontract any portion of the services under this Contract shall be completed on a form prescribed by the State Auditor. The agreement shall be an amendment to this Contract and shall specify the portion of the audit services to be performed by the subcontractor, how the responsibility for the audit will be shared between the Contractor and the subcontractor, the party responsible for signing the audit report and the method by which the subcontractor will be paid. Pursuant to Section 2.2.2.8(G) NMAC, the Contractor may subcontract only with independent public accountants who have submitted completed and approved firm profiles as provided in Section 2.2.2.8(A) NMAC.

9. **RECORDS AND AUDIT**

The Contractor shall maintain detailed time records that indicate the date, time, and nature of services rendered during the term of this Contract. The Contractor shall retain the records for a period of five (5) years from the date of final payment under this contract. The records shall be subject to inspection by the Agency and the State Auditor. The Agency and the State Auditor shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the Agency or the State Auditor on behalf of the Agency to recover excessive or illegal payments.

10. **RELEASE**

The Contractor, upon receiving final payment of the amounts due under the Contract, releases the State Auditor, the Agency, its officers and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract. This paragraph does not release the Contractor from any liabilities, claims or obligations whatsoever arising from or under this Contract.

11. **CONFIDENTIALITY**

All information provided to or developed by the Contractor from any source whatsoever in the performance of this Contract 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 Agency and the State Auditor.

12. PRODUCT OF SERVICES; COPYRIGHT AND REPORT USE

Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. The Agency and the State Auditor may post the audited financial statements on their respective websites. The Contractor agrees that the FCD of DFA is free to use the audited financial statements of the educational institutions established by Article 12, Section 11 of the Constitution of New Mexico, in the statewide Comprehensive Annual Financial Report (CAFR) and that the Contractor's audit report may be relied upon during the audit of the statewide CAFR, if applicable.

13. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Contractor certifies that the requirements of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

14. INDEPENDENCE

The Contractor affirms and represents its personal, external and organizational independence from the Agency in accordance with the *Government Auditing Standards 2003 Revision*, issued by the Comptroller General of the United States, and 2.2.2.8(H) NMAC. The Contractor shall immediately notify the State Auditor and the Agency in writing if any impairment to the Contractor's independence occurs or may occur during the period of this Contract.

15. AMENDMENT

This Contract shall not be altered, changed or amended except by prior written agreement of the parties and prior written approval of the State Auditor. Any amendments to this Contract shall comply with the Procurement Code, Chapter 13, Article 1 NMSA 1978. **The engagement letter or any documentation included with the engagement letter shall not be interpreted to amend the contract.**

16. MERGER

This Contract incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or

understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

17. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Contract. By execution of this Contract, 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 Contract.

18. AGENCY BOOKS AND RECORDS

The Agency is responsible for maintaining control of all books and records at all times and the Contractor shall not remove any books and records from the Agency's possession for any reason.

19. APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and the Agency's governing body for the performance of this Contract. If sufficient appropriations and authorization are not made by the Legislature and the Agency's governing body, this Contract shall terminate upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

20. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Chapter 13, Article 1 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

21. EQUAL OPPORTUNITY COMPLIANCE

The Contractor agrees to abide by all Federal and State laws, 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, rules, regulations and orders, the Contractor assures that no person in the United States shall, on the grounds of race, age, religion, color, national origin, ancestry, sex, 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 Contract. If the Contractor is found not to be in compliance with these requirements during the life of this Contract, the Contractor agrees to take appropriate steps to correct these deficiencies.

22. WORKING PAPERS

- A. The Contractor shall retain the working papers of the Agency's audit conducted pursuant to this Contract for a period of five (5) years from the date shown on the opinion letter of the audit report, or longer if requested by the federal cognizant agency for audit, oversight agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor, the Contractor shall deliver the original or clear, legible copies of all working papers to the State Auditor.
- B. The working papers of a predecessor Contractor are to be made available to a successor Contractor in accordance with SAS No. 84. Any costs incurred are to be borne by the requestor Contractor.

23. DESIGNATED ON-SITE STAFF

The Contractor's on-site individual auditor responsible for supervision of work and completion of the audit is _____. The Contractor shall notify the Agency and the State Auditor in writing of any changes in staff assigned to perform the audit.

24. INVALID TERM OR CONDITION

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected.

25. OTHER PROVISIONS

The audit shall cover the whole reporting entity of the college or university including all component units, pursuant to Sections 2.2.2.10(A) and 2.2.2.12(E)(3) NMAC, *Requirements for Contracting and Conducting Audits of Agencies*. If a 501(c)(3) component unit organization had a gross annual income in excess of \$100,000, Section 6-5A-4 NMSA 1978 requires that entity be audited regardless of materiality.

IN WITNESS WHEREOF, the parties have executed this Contract as of the date of signature by the State Auditor.

AGENCY

CONTRACTOR

BY: _____
TITLE: _____
DATE: _____

BY: _____
TITLE: _____
DATE: _____

This Contract has been approved by:

STATE AUDITOR

BY: _____
TITLE: _____
DATE: _____

State Auditor Contract No. **10** -

SAMPLE