

State of New Mexico
Public School Facilities Authority

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RE: Joint Powers Agreement

Dear Colleagues,

Enclosed is an updated Joint Powers Agreement (JPA) for your district that renews our current agreement.

The previous JPA signed by your district/representative has expired and the attached JPA is the updated version.

- It is the same agreement with no substantive changes. The date of expiration has been removed. Other details remain identical.
- State-Chartered Charter School have been added.
- If your district does not intend to apply for Public School Capital Outlay grants in the future, it does not need to sign the new JPA.
- PSFA has no authority over district governance, but when the state provides funding for a project in your district, PSFA is required by statute to oversee the expenditure of those funds. The JPA enables us to do that.
- The JPA requests that each district designate a representative who will serve as the delegated authority and single point of contact for decision making for the district. This can be the superintendent or any other individual who the board feels is most qualified. The reason is that the construction business depends on extensive information exchange, and there often can be little time to process decisions without creating legal and fiscal liabilities. It should be noted that PSFA will never ask for a district representative to be given authority to overspend a Board budget that includes contingency.

SCHOOL DISTRICT MASTER JOINT POWERS AGREEMENT
For Facilities Management Assistance and Oversight

THIS AGREEMENT is made and entered into by the Public School Capital Outlay Council, hereinafter referred to as the “PSCOC”, through its Public School Facilities Authority, herein referred to as the “PSFA”, and the New Mexico School for the Deaf, hereinafter referred to as the “DISTRICT”.

WHEREAS, the parties are authorized to enter into Joint Powers Agreements in accordance with, and pursuant to, the Joint Powers Agreement Act, Sections 11-1-1 through 11-1-7, NMSA 1978;

WHEREAS, the purpose of the Public School Capital Outlay Act, pursuant to Chapter 22, Article 24, NMSA 1978, is to ensure that the physical condition of public school facilities in New Mexico meets an adequate level which promote safe, functional and durable learning environments for student success.

WHEREAS, the PSCOC is created pursuant to Section 22-24-6, NMSA 1978 and is empowered to approve allocations for public school capital outlay assistance, and is granted certain oversight authority for public school capital outlay projects;

WHEREAS, the PSFA is created as part of the PSCOC pursuant to Section 22-24-9, NMSA 1978 and is empowered to work with school districts to validate requests for grant assistance, oversee all aspects of contracts, and provide oversight and management of planning, construction and maintenance of school facilities;

WHEREAS, Sections 22-24-5.3 and 22-24-5.5, NMSA 1978 provides additional assistance and oversight functions for development and implementation of preventive maintenance plans and performance pursuant to those plans for all school districts, including those not applying for grant assistance.

WHEREAS, the DISTRICT, governed by its local school board, pursuant to Section 22-5-4, is empowered to control and maintain all public schools and property within the school district, including contracting for the construction and repair of school property;

WHEREAS, the New Mexico School for the Blind & Visually Impaired and the New Mexico School for the Deaf, governed by their boards of regents, pursuant to Sections 21-5-2 and 21-6-1 respectively are empowered to manage and control all buildings and property under their jurisdictions;

NOW, THEREFORE, the parties, in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

I. DEFINITIONS

“facility” means public school building and grounds of a public school, including a charter school, an administration building, a related school structure, supporting infrastructure or facilities, including teacher housing, as may be owned, acquired or constructed by the local school board and as necessary to carry out the powers and duties of the local school board;

“facility assessment database deficiencies” means a condition or conditions in any of the twenty-five (25) major building systems of public school buildings and grounds that may be identified as below industry or state standards and classified within nine (9) data categories to determine the facility condition index (FCI) of the building or school site;

“facility condition index (FCI)” means that measure widely used in the building industry to represent the physical conditions of a facility compared to its replacement value. The index, reflected as a percentage, is calculated by dividing the repair costs by the replacement value of a facility;

“facilities information management system” means the web-based database overseen by the PSFA Districts use to track maintenance activities as required by Sections 22-24-5.3 and 22-24-5.5.

“New Mexico Condition Index (NMCI)” means the measure of the physical condition and adequacy of a school facility relative to the state’s adequacy standards. Weighting factors, including growth, are utilized to develop a modified percentage in order to prioritize facilities to receive capital outlay assistance from the PSCOC;

“preventive maintenance” means the regularly scheduled inspection and maintenance activities needed to keep building systems and components operating safely and at peak efficiency to prevent breakdowns and extend the useful life. "Preventive maintenance" also includes on-going training and professional development of maintenance personnel.

“public school” means that part of a school district that is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;

“school building” means a public school, an administration building and related school structure or facilities;

“school district” means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes. For purposes of this agreement, “school district” or “district” includes state chartered charter schools, the New Mexico School for the Blind and Visually Impaired (NMSBVI) and the New Mexico School for the Deaf (NMSD);

“public school capital outlay project” or “work” means those projects funded by the PSCOC for the acquisition, improvement, alteration or reconstruction of a school building, including all proposed expenditures related to the entire undertaking, including a program for the correction of health, safety or infrastructure deficiencies at the New Mexico School for the Blind and Visually Impaired (NMSBVI) and the New Mexico School for the Deaf (NMSD).

II. EFFECTIVE DATE AND TERM

This Agreement shall be effective upon signature by and approval of the PSFA, PSCOC and the District and subsequent approval by the Secretary of the Department of Finance and Administration. This Agreement shall remain in effect indefinitely, unless terminated by either party upon 30 day written notice, or pursuant to Paragraph III herein.

III. TERMINATION

If the District fails to perform in the manners prescribed by this Agreement or specific subsequent Memorandum of Understanding (MOU) entered into by the parties, the PSCOC may terminate the Agreement for default.

IV. SCOPE OF AGREEMENT

- A. The parties will cooperate to provide for an on-going inventory of school facilities and equipment, their condition, and maintenance activities related to them.
- B. The parties will further cooperate to complete capital outlay projects pursuant to the provisions of the Public School Capital Outlay Act and in accordance with rules adopted by the PSCOC.
- C. Specific projects or groupings of projects will be agreed to through separate subsequent Memorandums of Understanding entered into by the parties, which shall detail the specific scope of work, budget, procurement method, roles and responsibilities of the parties, and schedule for completing the projects.
- D. Project agreements for charter schools shall be contingent upon the submission of documentation sufficient to ensure that the provisions of Article IX, Section 14 of the New Mexico Constitution (the “anti-donation clause”) are not violated.

V. ADMINISTRATION OF AGREEMENT

- A. The PSFA shall work with school districts to identify and validate the assessment of outstanding facility deficiencies and maintain a prioritized listing

based on the New Mexico Condition Index (NMCI), which ranks every facility in every school district based upon relative need, from the greatest to the least.

B. The District shall participate in and coordinate maintenance activities through the facilities information management system provided by the PSCOC and administered through the PSFA to allow for statewide monitoring and reporting of school-level and district-wide maintenance efforts.

C. The PSFA and Districts will cooperate to advance school facility maintenance through expanded preventive maintenance activities, use of the web-based facility information management system, update of available facility equipment data, and maintenance personnel training and professional development.

D. The PSCOC, through the PSFA shall assist school districts in identifying critical capital needs and in preparing grant applications for needed improvements to facilities under a standards-based process consistent with the Public School Capital Outlay Act.

E. The District shall be responsible for review of the data in the Facilities Assessment Database (FAD) and will be responsible for providing data corrections to PSFA as needed. The District is also responsible for notifying PSFA of any planned facility upgrades or immediate safety issues in the school facility which could impact the school's Weighted NMCI score.

F. The District shall be responsible for contacting PSFA in advance of entering into a school facility lease purchase agreement or planned occupancy of a public building by a charter school. PSFA shall be responsible for assessment of the buildings against adequacy standards and may grant variances based on the charter school's ability to meet standard requirements through alternative means.

G. Upon PSCOC approval and final execution of this Agreement between the PSFA and the District, the PSFA will assist the District to facilitate the completion of the work. The PSFA will further assist the District to procure contracts for design and construction for the completion of the work. The selection process and contract award shall be in accordance to the Procurement Code, Sections 13-1-28 et seq. NMSA 1978, as amended.

H. PSFA management and oversight involvement shall be either direct or indirect, depending on the degree of qualified personnel in the District and their ability to provide proper oversight of the project. The oversight process shall be specifically defined in the Memorandum of Understanding and may include the following requirements of the District: use of standardized documents, procedures, and reports; review, approval and payment for completed work at each phase; or other requirements, as defined by the PSFA. The PSFA shall

have the authority to require such reporting requirements and conditions and take such actions as are necessary to ensure that state funds are expended in the most prudent manner possible and consistent with the original purpose. If the PSCOC determines that a project is repeatedly in substantial noncompliance with any management and reporting requirements or condition, the PSCOC may direct the PSFA to take over the direct project administration until the project is complete, or may terminate the Agreement pursuant to Paragraph III herein.

I. Joint projects entered into by the parties utilizing PSCOC funds in conjunction with other District funding sources shall be detailed in subsequent MOUs. All joint projects utilizing PSCOC funds require PSFA oversight and management of the entire project, including portions of the work funded from District sources.

J. For the scope of this Agreement, the District shall serve as the “owner” of the facilities and shall be responsible to maintain adequate insurance coverages as may be required, including adequate builders’ risk coverage of the contractors. At PSFA’s request, the District shall serve as the central purchasing agent for procuring all goods and services required to complete the projects. All procurements made pursuant to this Agreement shall be in accordance with Procurement Code, Sections 13-1-28 et seq. NMSA 1978, as amended. The District shall bear administrative and financial responsibility for mailings and fees related to this role.

K. The PSFA shall serve as the “co-owner” and will be responsible for approval for all completed work. The MOU agreements shall set forth the district’s preference and financial capabilities for making direct payments to the contractors, as may be authorized by the PSCOC. The PSFA shall have unlimited access to District facilities and records related to the scope of this Agreement.

VI. EXPENDITURES

A. All expenditures made subject to this Agreement shall be in accordance with the budgets that may be approved by the PSCOC and detailed in separate subsequent Memorandums of Understanding which shall be appended hereto as an Attachment, and incorporated by reference as though fully set forth herein.

B. No transfer of funds shall be made to the District for expenditure. All disbursements for permissible and approved expenditures under this Agreement will be made by the PSFA, who shall be strictly accountable for all receipts and disbursements. Upon submission of vouchers supported by approved purchase orders or equivalent documents, or invoices by the suppliers, evidencing propriety of the expenditure, the District, contractor or vendor may be paid directly for approved expenses by the PSFA.

C. The PSCOC will fund District use of the web-based facility information management system as long as each district makes effective use of the system.

D. Joint projects in accordance with Paragraph V, Section C herein shall require disbursement and accountability of funds by the responsible party.

VII. REIMBURSABLE EXPENSES

Only approved legitimate project expenses incurred by the District in relation to carrying out the provisions of this Agreement and separate subsequent Memorandums of Understanding will be reimbursed by the PSFA. Incidental expenses of the District, such as employee salary and benefits, mileage, travel, per diem, photos, copying, telephone, and postage, will not be reimbursed.

VIII. SURPLUS FUNDS

At the completion of a project, surplus funds, including contingencies, shall revert to the Public School Capital Outlay fund for reallocation by the PSCOC.

IX. AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto and approved by the PSCOC and the Secretary of the Department of Finance and Administration.

X. EXECUTION OF DOCUMENTS

The parties agree to execute any documents necessary to implement the terms of this Agreement. The District shall designate in writing an individual or individuals who have been authorized by the local board to execute all subsequent contracts, Memorandums of Understandings and related documents required to complete the work. This designation of the authorized individual(s) shall be attached hereto as Attachment 1 which may be amended as necessary throughout the term of this Agreement.

XI. INTEGRATION OF AGREEMENT

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

XII. DISPOSITION OF MATERIALS, EQUIPMENT, AND SUPPLIES

- A. Equipment and supplies provided and acquired by the PSFA during the course of this agreement for administrative purposes shall remain with the PSFA at the completion of the Agreement.
- B. The District will make space available, if possible, to house PSFA staff during the course of the Agreement to oversee and manage the design and construction of the projects. All equipment provided by the District for use by the PSFA shall remain with the District at the completion of the Agreement.
- C. All materials and products installed and purchased in the course of the projects shall be the property of the District and shall remain owned by the District or disposed of in accordance with State law.

XIII. ASSIGNMENT

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

XIV. SUBCONTRACTS

The District shall not assign any portion of its scope of work described under this Agreement or separate subsequent Memorandums of Understanding, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the PSFA. Any subcontract entered into without PSFA's prior written approval shall be null and void and grounds for termination of this Agreement. In the event that the PSFA concurs with a request by the District to subcontract, such subcontract shall conform to applicable requirements of the Procurement Code and the District shall be responsible for any and all payments to the subcontractor from District funds. PSFA shall set forth in its written approval of the subcontract costs (if any) associated with the approved subcontract that shall be reimbursable, which shall be subject to the allowable costs described in Paragraph VII herein.

XV. MAINTENANCE OF RECORDS

The parties agree to keep such records as may be required of the PSFA and District relative to the subject matter of this Agreement. These records shall be maintained for a period of five (5) years following the close of the fiscal year in which expenditures are incurred and shall be subject to inspection and audit as provided by law.

XVI. STRICT ACCOUNTABILITY OF FUNDS

The parties shall provide for strict accountability of funds expended pursuant to this Agreement. The District shall account for all purchased or completed work as assets of the District in the fiscal year in which purchased or installed.

XVII. RECORDS AND AUDITS

A. The District shall permit the authorized representatives of the PSFA, Department of Finance and Administration, or State Auditor to inspect and audit all data and records of the District relating to its performance under this Agreement. The District agrees to include in all PSFA-approved subcontracts a provision that the subcontractor agrees that the PSFA or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to inspect records or documents of such subcontractor, involving transactions relating to this Agreement.

B. The period of access and examination described above, for records which relate to litigation of the settlement of claims arising out of the performance of this Agreement shall continue until such appeals, litigation, or claims have been eliminated.

XVIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

XIX. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement shall terminate upon written notice by the PSFA to the District. The PSFA decision as to whether sufficient appropriations are available shall be accepted by the District as final.

XX. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS THEREOF, the Parties have set their signatures hereto:

PUBLIC SCHOOL FACILITIES AUTHORITY

Robert Gorrell, Director

Date

GADSDEN INDEPENDENT SCHOOLS

Ms. Cynthia Nava, Superintendent

Date

President, Board of Education

Date

PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

PSCOC Chair

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION

Dannette Burch, Secretary Designee

Date