Agreement between the Owner and the Construction Manager at Risk (CMAR) for the Addition and Renovation of the Main Campus Science “L” Building Project

Project (short title):
Location: (City/Town, State)  
CNM Project No.:
Owner’s MACC is ______________ Owner’s Target GMP is ______________

Distribution to:
☐ Construction Manager at Risk
☐ CNM Purchasing Department
☐ Design Professional (copy)
☐ CNM Facilities (copy)
☐ CNM Business Office (copy)
☐ CNM

This Agreement entered into this day of __, 20___, by and between the parties as follows:

CG: CENTRAL NEW MEXICO COMMUNITY COLLEGE PURCHASING DEPARTMENT
525 BUENA VISTA SE
ALBUQUERQUE, NM  87106
Telephone: (505) 224-4546
Fax: (505) 224-4548

THE CMAR
(NAME OF FIRM)
(ADDRESS 1)
(ADDRESS 2)
(CITY/TOWN), NM (ZIP CODE)
Telephone: (505) (PHONE)
Fax: (505) (FAX NUMBER)

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

Agreement between CONSTRUCTION MANAGER AT RISK and CNM for P-348
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THE CONTRACT DOCUMENTS
The Purchase order-issued by CNM
Exhibit 2: Agreement between Owner and CONSTRUCTION MANAGER AT RISK including all attachments and exhibits
Exhibit 1: General Conditions of the Contract for Construction including attachments and exhibits
Exhibit 3: Supplementary Conditions
All Addenda Issued Prior to and all Amendments and Modifications Issued
The RFP P-348 for this project issued by CNM
Offer from CMAR as a response to the RFP, steps 1-3 for the project

Documents supplied by CONSTRUCTION MANAGER AT RISK
Certificate(s) of Insurance
Assignment of Antitrust Claims
MACC Verification and Proposal Bond
CONSTRUCTION MANAGER AT RISK Performance Bond(s) from CMAR

Labor and Material Payment Bond(s) from CONSTRUCTION MANAGER AT RISK
Agent's Affidavit

Documents supplied by Design Professional
Drawings should match those of the CONSTRUCTION MANAGER AT RISK and Owner
Specifications should match those of the CONSTRUCTION MANAGER AT RISK and Owner
Other documents that form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

Other forms will be agreed to by Owner and CONSTRUCTION MANAGER AT RISK and DP as needed and added
GMP Change Request form (prior to setting the GMP)
GMP Amendment form
Preconstruction Work Plan
Notice to Proceed Pre-Construction
Limited Notice to Proceed-Early Work Construction
Notice to Proceed-with amendment of the GMP Construction
Approval of Subcontractor List
MCR forms
Change Order forms
Substantial completion form Pay Application form
Certificate for Payment
ARTICLE 1
CONSTRUCTION MANAGER AT RISK
DEFINITIONS

Except as expressly defined or modified below or elsewhere in this Contract, all terms shall have the meanings set forth in the Master Definitions.

ARTICLE 2
CONTRACT DOCUMENTS

2.1 Contract Documents. For consideration as stated below, Owner and the Construction Manager at Risk (CMAR) agree to the terms of the contract that are set forth in the Contract Documents. As used in the General Conditions, the "Contract" shall mean CNM’s Purchase Order with this attached CONSTRUCTION MANAGER AT RISK Contract, General Conditions and related attachments and exhibits.

2.2 Effective Date. This Construction Manager at Risk Contract (hereafter the "Contract") shall become effective on the first date on which every party has signed this Contract and Owner has received all necessary approvals, including approval for legal sufficiency including but not limited to an award of the procurement and issuance of a purchase order.

2.3 The Contract; Order of Precedence. The Purchase Order, along with this Contract, together with General Conditions for Construction with the other Contract Documents, amendments, addenda, attachments and exhibits form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in the Purchase Order if there are inconsistent or conflicting terms among the Contract Documents.

2.4 Educational Facility Construction Manager At Risk Act

2.5 Procurement Code Compliance
The Construction Manager at Risk recognizes that Owner is a public entity. Procurement of construction, subcontractors, supplies, and of subcontractors and suppliers, must be performed in compliance with the New Mexico Procurement Code, N.M. Stat. Ann. § 13-1-1, et seq. (the “Procurement Code”). Construction Manager at Risk represents and agrees that, in its procurement of subcontractors, suppliers, labor, materials, and supplies for the Project, it will comply in all material respects with the requirements of the Procurement Code. Construction Manager at Risk represents and agrees that it will contact the Owner’s purchasing office,
particularly the Director of Purchasing and Materials Management, at (505) 224-4546, with any questions Construction Manager at Risk has concerning compliance with the Procurement Code.

ARTICLE 3
WORK OF THIS CONTRACT

3.1 Preconstruction Phase Services. The Construction Manager at Risk agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Qualifications attached as a contract document. Commencement of the Construction Phase shall not excuse Construction Manager at Risk from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include Construction Manager at Risk Services performed during the Preconstruction Phase. This includes the uploading of data to the Project Management software.

3.1.1 The Construction Manager at Risk shall provide a preliminary evaluation of the Owner’s program and budget requirements, each in terms of the other.

3.1.2 The Construction Manager at Risk shall provide the following services relating to design and construction tasks:

a) The Construction Manager at Risk shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.

b) The Construction Manager at Risk shall jointly schedule and attend regular meetings with the Design Professional and Owner’s Authorized Representative. The Construction Manager at Risk shall consult with the Owner and Design Professional and User Representative regarding site use and improvements, and the selection of materials, building systems and equipment.

c) The Construction Manager at Risk shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

d) The Construction Manager at Risk shall review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice to eliminate areas of conflict, overlapping trade jurisdictions, and overlaps in the Work to be performed by the various subcontractors, and to endeavor to confirm that all Work has been included in the Documents.

e) Construction Manager at Risk shall review completed Schematic Design Documents, Design Development Documents, and Construction Documents and suggest
modifications whenever design details affect construction feasibility, schedules or cost in an effort to maintain the MACC and to improve completeness and clarity.

f) CONSTRUCTION MANAGER AT RISK shall work with Design Professional and Owner to review systems and equipment using auto cad format and utilizing 3-D modeling.

3.1.3 The Construction Manager at Risk shall provide the following services related to the Project schedule: The CMAR shall be required to upload all data in CNM Project Management software.

a) The Construction Manager at Risk shall prepare, and weekly update, a preliminary Project schedule for the Design Professional’s and Owner’s review and approval.

b) The Construction Manager at Risk shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Design Professional, and Construction Manager at Risk. As design proceeds, Construction Manager at Risk shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner’s occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner’s prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager at Risk shall make appropriate recommendations to the Owner and Design Professional.

3.1.4 The Construction Manager at Risk shall make recommendations to Design Professional and Owner regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project. The CONSTRUCTION MANAGER AT RISK shall assist in relocation of staff and equipment phasing to facilitate construction.

3.1.5 The Construction Manager at Risk shall provide the following services relating to cost estimating and shall be required to upload data on CNM Project Management software reflecting the best professional estimate of actual cost estimates.

(A) Project construction cost estimates shall be developed/updated and submitted as a part of the following submissions:

(i) At the award of contract, the CONSTRUCTION MANAGER AT RISK shall provide an estimate of total construction cost of the project based on the written scope of work. The estimate shall utilize area, volume, or similar estimating techniques for review by Design Professional. The cost shall be summarized in a way to show and avoid potential cost overruns.

(ii) 100% schematic design: CONSTRUCTION MANAGER AT RISK shall
provide an updated statement of probable construction cost for the project. The estimate shall be arranged in uniform format detailed to Level 2. The cost shall also be summarized to show all issues discussed and how costs have been incorporated.

(iii) 100% Preliminary Design (Design Development): CONSTRUCTION MANAGER AT RISK shall provide an updated estimate of probable cost for project. Estimates for building projects shall be arranged in uniform format detailed to Level 3. This cost shall be summarized to ensure all refinement and changes have been addressed in the estimate.

(iv) 50 to 95%: CONSTRUCTION MANAGER AT RISK shall provide an updated statement of probable construction costs for the project at 50% and 95% or other designated percentage of the development of the construction documents. Estimates for projects shall be arranged in uniform format detailed to Level 4. The costs shall also be summarized for Owner and Design Professional review.

3.1.6 To accomplish the objective set forth in 3.1 above, the Construction Manager at Risk shall provide consultation throughout the Preconstruction Phase including, but not limited to the furnishing of all necessary Value Engineering services. The object of the Value Engineering is to achieve optimum value for each construction dollar spent and keep the time of completion and cost of the Work within the time and fiscal constraints set forth in the Contract Documents. In cooperation with the Owner and the Design Professional, the Construction Manager at Risk shall:

a. Formulate and evaluate alternative design, schedules, systems, and materials;

b. Provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives;

c. Evaluate the alternatives on the basis of costs, time schedules, availability of labor and materials and construction feasibility;

d. Prepare written reports at the end of the Schematic Design Phase and the Design Development Phase summarizing the Value Engineering activities. The reports shall indicate each Value Engineering alternative considered, the cost estimate for the alternative, the cost to incorporate the alternative and whether or not the Owner and the Design Professional agreed to accept the alternative.

e. In addition to the reports discussed in subparagraph (d) above, the CONSTRUCTION MANAGER AT RISK shall maintain a running log of all Value Engineering alternatives considered throughout the entire preconstruction period. The log shall include the cost estimate for the alternative, the cost to incorporate the alternative and indicate whether or not the Owner and the Design Professional have agreed to incorporate the alternative.
f. Constructability Review. CONSTRUCTION MANAGER AT RISK shall check the documents for completeness and coordination and make recommendations to Design Professional and Owner.

3.1.7 The Construction Manager at Risk shall perform the following tasks related to subcontracting:

a. The Construction Manager at Risk shall seek to develop subcontractor and supplier interest in the Project, and shall furnish to the Owner and Design Professional for their information a list of possible subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification.

b. The Construction Manager at Risk shall provide input to the Owner and the Design Team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. Construction Manager at Risk shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, and improving or accelerating construction completion.

c. Prior to commencement of any Construction, either for Early Work or GMP Amendment Work, CONSTRUCTION MANAGER AT RISK shall provide to Owner the Combined List of Subcontractors. The Facilities representative shall review the list and approve or give any objections to the "CONSTRUCTION MANAGER AT RISK".

3.1.8 The Construction Manager at Risk shall recommend to the Owner and Design Professional a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the Construction Manager at Risk upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner. The Construction Manager at Risk shall expedite the delivery of long-lead time items.

3.1.9 The Construction Manager at Risk shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or Material Suppliers or alternative contracting methods.

3.2 Construction Phase Services.

3.21 Upon execution of an Early Work Amendment or GMP Amendment, the Construction Manager at Risk shall provide Construction Phase Services as provided in the Contract Agreement between CONSTRUCTION MANAGER AT RISK and CNM for P-348
Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents.

3.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Construction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.

3.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of the GMP Amendment. Construction Manager at Risk shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the Construction Manager at Risk Fee, does not exceed the Early Work Price; however if Construction Manager at Risk performs Early Work with a cost in excess of the Early Work Price, the Construction Manager at Risk shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the Construction Manager at Risk shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments.

3.2.4 Prior to commencement of any Construction, and in any event not later than mutual execution of the GMP Amendment, Construction Manager at Risk shall provide to Owner a performance bond and a payment security bond as required by the General Conditions in amounts equal to the value of the Amendment(s). If an Early Work Amendment is executed, Construction Manager at Risk shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. Construction Manager at Risk shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, Construction Manager at Risk shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

3.3 Construction Management (CM) Services. Throughout the Preconstruction Phase and Construction Phase of the Project, the Construction Manager at Risk shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Owner, User Representative, Design Professional and other designated Project consultants (the "Construction Principals"). CM Services shall include, but are not limited to:

3.3.1 Providing all Preconstruction Phase Services described above;

3.3.2 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of the Construction Principals to all parties during the Construction Phase.
3.3.3 Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;

3.3.4 Working with the Owner, the Owner Representative, and the Design Professional to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule;

3.3.5 Providing Value Engineering ("VE") services ongoing throughout the Project. Construction Manager at Risk shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner for its approval. Construction Manager at Risk acknowledges that VE services are intended to improve the value received by Owner with respect to cost reduction or life cycle of the Project;

3.3.6 Holding and conducting periodic meetings with the Owner, User Representative and the Design Professional to coordinate, update and ensure progress of the Work;

3.3.7 Submitting monthly written report(s) to the Owner. Each report shall include, but shall not be limited to, Project updates including (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress; (v) changes in the work; and (vi) other information as determined to be appropriate by the Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the Construction Manager at Risk or as requested by the Owner;

3.3.8 Preparing Daily Reports in the format of the report as outlined in General Conditions.

3.3.9 Developing and implementing a system of cost control for the Work acceptable to Owner, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager at Risk shall identify variances between actual and estimated costs and report the variances to the Owner and Design Professional at regular intervals;

3.3.10 Cooperating with any and all consultants hired by Owner;

3.3.11 Cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;

3.3.12 Assisting Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy;

3.3.13 Incorporating Owner HVAC and automated control system scheduled activities and inspections into the Project schedule and coordinating Subcontractors required to participate in the schedule;
3.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

3.3.15 Assist the Design Professional in evaluating Life Cycle Cost and Value Engineering. Options including but not limited to the following: building envelope, HVAC, lighting, and sustainability (LEED Silver or better). Cooperating to ensure building meets or exceed LEED Silver Certification with the Owner and the Design Professional throughout the project.

**ARTICLE 4**

**RELATIONSHIP AND ROLES OF THE PARTIES**

4.1 **Independent Contractor.** The Construction Manager at Risk is an independent contractor and not an officer, employee, or agent of Owner.

4.2 **Performance of Work.** The Construction Manager at Risk covenants with Owner to cooperate with the Design Professional and Owner and utilize the Construction Manager at Risk’s professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.

4.3 **Design Consultants.** Owner has a separate contract with the Design Professional related to the Project. The Construction Manager at Risk agrees to support Owner's efforts to create a collaborative and cooperative relationship among the Construction Manager at Risk, Design Professional, other Project consultants, Owner’s Representative(s), and the User Representative.

4.4 **Forms and Procedures.** The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The Construction Manager at Risk agrees to abide by those procedures and use those forms.

4.5 **Construction Manager at Risk’s Project Staff.** The Construction Manager at Risk’s Project staff shall consist of the following personnel:

4.5.1 **Project Manager:** ________________ shall be the Project Manager. The Project Manager will supervise and coordinate all Construction Phase and Preconstruction Phase Services of Construction Manager at Risk and participate in all meetings throughout the Project term unless otherwise directed by Owner. Construction Manager at Risk represents the Project Manager and has authority to execute Change Orders and Contract Amendments on behalf of Construction Manager at Risk.

4.5.2 **Job Superintendent:** If Construction Phase Services are requested and accepted by Owner, ________________ shall be the Construction Manager at Risk’s on-site Job Superintendent throughout the Project term.
4.5.3 Other Key Persons: (List here by name and title.) NOTE: All Key Persons listed for the project should be consistent with names and qualifications supplied in the RFP offer.

4.5.4 Key Persons. The Construction Manager at Risk’s personnel identified in Article 4.5, shall be considered Key Persons and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the Construction Manager at Risk intends to substitute personnel, a request must be given to Owner at least thirty 30 days (or such shorter period as permitted by Owner) prior to the intended time of substitution. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. Owner also has the right to request CONSTRUCTION MANAGER AT RISK to replace Project Manager or any other member of the CONSTRUCTION MANAGER AT RISK team.

ARTICLE 5
DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

5.1 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in an amendment to the purchase order, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services (“Notice to Proceed”). It is anticipated that the Notice to Proceed will be issued on or about May, 2014. A separate Limited Notice to Proceed shall be issued for any and every Early Work Amendment. A Notice to Proceed will also be issued with the amendment to the GMP setting the GMP for the remainder of the construction.

5.2 Completion of Project. The Construction Manager at Risk shall achieve Substantial Completion of the entire Work not later than May, 2015 after the effective date of the Notice to Proceed and shall achieve Final Completion not later than __________(date) after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion.

5.3 Time is of the Essence. All time limits stated in the Contract Documents are of the essence.

5.4 Time Extensions. Notwithstanding provisions for Contract time extensions in Article 8 of the General Conditions, Owner and Construction Manager at Risk agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. Construction Manager at Risk agrees to make every effort to recover "lost" time.

5.5 Liquidated Damages. The Construction Manager at Risk acknowledges that the Owner will sustain damages as a result of the Construction Manager at Risk’s failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. The Construction Manager at Risk and the Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:
5.5.1 Liquidated Damages shall be $500.00 for each day that Substantial Completion exceeds the required date of Substantial Completion. The Punch List items shall be completed after substantial completion and the CONSTRUCTION MANAGER AT RISK and Owner recognize it would be difficult to estimate damages. The CONSTRUCTION MANAGER AT RISK agrees to complete all remaining Punch List items by no more than 30 days and shall pay $500.00 for each day that the remaining completion item exceeds the 30 day limit or agreed to time.

5.5.2 The Construction Manager at Risk agrees to pay to the Owner the liquidated damage sums set forth above for each day of delay or any fraction thereof and further agrees that Owner may deduct such sums from payments the Owner otherwise owes to Construction Manager at Risk under the Contract. If such deduction does not result in payment to Owner of the assessed liquidated damages in full, Construction Manager at Risk shall promptly pay any and all remaining sums due to the Owner upon demand. Failure to pay will result in possible legal action and/or potential adjustment to future pay applications.

**ARTICLE 6**

**CONTRACT SUM AND GMP**

6.1 **Contract Sum.** If a GMP Amendment or Early Work Amendment is executed, Owner shall pay the Construction Manager at Risk, as payment for the Work, the "Contract Sum" which shall equal the sum of the Preconstruction Fee, the Construction Manager at Risk Fee, the fixed Cost for Specified General Conditions Work, the actual Cost of the Work and NMGRT, but not exceeding the GMP or Early Work Amendments.

The GMP shall be determined in accordance with the formula set forth below and as described in the contract. The Construction Manager at Risk Fee, Specified General Conditions and the Cost of the Work are defined in the contract. Costs in excess of the GMP shall be paid by the Construction Manager at Risk without reimbursement by Owner. Changes to the GMP shall only be authorized by Amendment or Change Order.

CONSTRUCTION MANAGER AT RISK Fee + Specified General Conditions + Cost of the Work = GMP (not including NMGRT).

6.2 **Preconstruction Fee.** The Preconstruction Fee shall be payable to Construction Manager at Risk on a cost reimbursement basis up to a maximum sum of $______________, which shall cover constructability review, value engineering, cost estimating and all other Preconstruction Phase Services, as described in Article 3. If Construction Manager at Risk’s costs for provision of Preconstruction Phase Services exceeds the maximum Preconstruction Fee, Construction Manager at Risk shall pay such additional cost without reimbursement. Construction Manager at Risk shall not be entitled to any Construction Manager at Risk Fee based upon the Preconstruction Fee. Owner shall pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. No Preconstruction Fee or other fee, compensation or reimbursement shall be payable to Construction Manager at Risk with respect to Preconstruction Services performed after execution of the GMP Amendment.
6.3 Construction Manager at Risk Fee. The Construction Manager at Risk shall submit a number on the Form of Proposal which represents the Construction Manager at Risk’s Fee stated as a percentage of the Cost of the Work. That fee shall be converted to a fixed dollar sum to be identified in the GMP Amendment, and shall be calculated as ___% (not to exceed) of the negotiated Cost of the Work at the time of the establishment of the GMP. In making such calculation, the Cost of the Work shall exclude the Preconstruction Fee, the fixed cost for Specified General Conditions, the Construction Manager at Risk Fee itself, but shall include Construction Manager at Risk Field Work, allowances, selected alternates, and reasonable Construction Manager at Risk contingencies as designated in the GMP Supporting Documents. The Construction Manager at Risk Fee shall include the following:

6.3.1 All profit of the Construction Manager at Risk for this project.

6.3.2 All regional and home office overhead expenses, including labor and materials, travel, phone, facsimile, postage and other incidental office expenses attributed to work on this project that is not specifically identified in the Specified General Conditions Work.

6.3.3 All expenses of the Construction Manager at Risk, whether direct or through consultants, for participation in and the support of the subcontractor bidding process of the project that are not paid for as Specified General Conditions Work.

6.3.4 All expenses of the Construction Manager at Risk to prepare for and participate in negotiations of the Guaranteed Maximum Price.

6.3.5 Other than New Mexico Gross Receipts Tax, the fee shall cover all taxes owed by the Construction Manager at Risk.

6.4 Payment and Adjustment of Construction Manager at Risk Fee.

6.4.1 Owner shall pay the Construction Manager at Risk Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the Construction Manager at Risk Fee shall be the above percentage multiplied by the Cost of the Early Work, until such time as a GMP Amendment is executed.

6.4.2 Unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the Construction Manager at Risk Fee then in effect by multiplying the percentage shown in Article 6.3 by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the Construction Manager at Risk Fee shall be limited to the total Construction Manager at Risk Fee multiplied by the percentage of Work completed and accepted at the time of termination. The Construction Manager at Risk Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

6.5 Specified General Conditions Work (SGC Work).
The Construction Manager at Risk shall submit a number on the Form of Proposal which represents the dollar amount for the “Specified General Conditions Work.” The Specified General Conditions Work shall consist of all requirements of the Construction Manager at Risk Contract, General Conditions and Division One so marked in Attachment form – SUMMARY MATRIX OF COST ALLOCATION and incorporated herein by reference as if set forth in full. In addition, Specified General Conditions Work shall include:

6.5.1 Wages and salaries of the Construction Manager at Risk’s project management, supervisory and administrative personnel stationed at the site.

6.5.2 Fringe benefit costs paid or incurred by the Construction Manager at Risk for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in Specified General Conditions Work.

6.5.3 That portion of premiums for insurance directly attributable to this Contract and for payment and performance bonds required by the General Conditions.

6.6 Payment of Fixed Cost for Specified General Conditions Work. Construction Manager at Risk may be paid a fixed sum of $________ (not to exceed) as payment for the Specified General Conditions Work, including all associated labor, materials, and direct and indirect costs. The Fixed Cost for Specified General Conditions may be paid in equal installments monthly over the number of months of the scheduled Construction Phase (including any Early Work Phase), commencing with the first progress billing after commencement of the Construction Phase.

6.7 Determination of the Guaranteed Maximum Price (GMP).

6.7.1 When Owner and Construction Manager at Risk mutually agree that the drawings and specifications, or written Scopes of Work are sufficiently complete for the Construction Manager at Risk to provide a Guaranteed Maximum Price for the Work, the Construction Manager at Risk shall, within fourteen (14) calendar days, deliver to Owner a proposed Guaranteed Maximum Price and GMP Supporting Documents for review and negotiation. If any actual subcontract offers are available at the time the GMP is being established, Construction Manager at Risk shall use those subcontract offers in establishing the GMP.

6.7.2 As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the Construction Manager at Risk shall provide in the GMP for further development of the Plans and Specifications by the Design Professional that is consistent with the Contract Documents and reasonably inferable thereof. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, furniture, telecommunications, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
6.7.3 The Construction Manager at Risk shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include and be provided to the CNM Facilities Department and the Purchasing Department:

a. A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.

b. A list of allowances and a statement of their basis and a general schedule of value showing allowance line items.

c. A list of the clarifications and assumptions made by the Construction Manager at Risk in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.

d. The proposed GMP including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the associated fees that comprise the GMP.

e. The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

6.7.4 The Construction Manager at Risk shall meet with the Owner and Design Professional to review the GMP proposal and the written statement of its basis. If the Owner or Design Professional discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager at Risk, who shall make appropriate adjustments to the GMP proposal, its basis or both.

6.7.5 Prior to the Owner's acceptance of the Construction Manager at Risk’s GMP proposal and issuance of the GMP Amendment and a Notice to Proceed, the Construction Manager at Risk shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.

6.7.6 The Owner shall authorize and cause the Design Professional to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the Construction Manager at Risk in accordance with schedules agreed to by the Owner, Design Professional and Construction Manager at Risk. The Construction Manager at Risk shall promptly notify the Design Professional and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

6.7.7 The GMP shall include the Construction Manager at Risk's contingency, a sum established by the Construction Manager at Risk for the Construction Manager at Risk's use (approved by Owner’s Representative) to cover additional development of Plans and Specifications which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.
6.7.8 The Construction Manager at Risk shall work with the Design Professional and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the Design Professional to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.

6.7.9 Notwithstanding the level of detail represented in the GMP Supporting Documents, the Construction Manager at Risk shall represent and warrant that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.

6.8 Failure to Furnish an Acceptable GMP. If the CONSTRUCTION MANAGER AT RISK does not furnish a Cost for the Work, that when added to its proposal for Construction Manager at Risk Fee and Specified General Conditions, its negotiated Preconstruction Fee, NMGRT, and all other costs resulting in a GMP that is within Owner's Target GMP Range bound by the MACC, or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate this Contract without liability, and the Construction Manager at Risk shall not receive additional compensation beyond the Preconstruction Fee under this Contract and sums due under any Early Work Amendment.

6.9 Acceptance of GMP. Upon acceptance of the GMP by Owner, the parties shall execute a GMP Amendment. This is completed through the revision of a Purchase Order.

6.10 Owner Savings. If the sum of the Construction Manager at Risk Fee, plus the Specified General Conditions, plus the actual and final Cost of the Work is less than the GMP, the savings shall accrue to the Owner, and shall be returned by contract modification. All left over contingency fees shall also be returned to the Owner.

6.11 Allowance Work.

6.11.1 Construction Manager at Risk shall not perform any Allowance Work without prior approval of Owner and providing the sub-contractors list and bids where appropriate.

6.11.2 Owner shall be entitled to apply any Allowance line items that have not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.

6.11.3 If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, Construction Manager at Risk shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work. GMP Contingency funds may be allowable for this purpose.

6.11.4 The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.
6.11.5 If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a contract modification.

ARTICLE 7

CHANGES IN THE WORK

7.1 Changes in the Work Prior to the Execution of the GMP Amendment. Following the Programming Phase, the Construction Manager at Risk shall prepare a Statement of Probable Cost. The Construction Manager at Risk shall include in the statement appropriate contingencies for design, bidding or negotiating, price escalation and market conditions. The Design Professional shall use the Statement of Probable Construction Cost in development of subsequent design submissions. All shall work with CONSTRUCTION MANAGER AT RISK to ensure cost containment.

7.1.1 The MACC is established, as a condition of this Agreement, as a fixed limit of Construction for design and pricing purposes. At the conclusion of the Schematic Design Phase, the Design Professional shall cooperate with the Construction Manager at Risk in determining, with Owner approval, what materials, equipment, component systems, and types of construction are to be included in subsequent design submissions and the Construction Documents to bring construction cost within the MACC.

7.1.2 At each design phase, and periodically as deemed appropriate by the Construction Manager at Risk to maintain the MACC and GMP accordingly, the Design Professional shall provide to the Construction Manager at Risk, four (4) sets of construction documents or otherwise agreed to amount. The Construction Manager at Risk will prepare a Statement of Probable Construction Cost within fourteen (14) days of each of the Design Professional’s phase submittals, and cost estimates within seven (7) days of any partial submittals. If the Construction Manager at Risk’s Statement of Probable Construction Cost at the end of each of the Schematic Design and Design Development Phases exceeds the established Maximum Allowable Construction Cost, the Construction Manager and Design Professional shall propose cost reductions acceptable to the Owner to bring the project within budget. These joint cost management recommendations shall be provided within fourteen (14) days of the Construction Manager at Risk’s statements or estimates. Redesign necessary to bring the project within the established MACC through the end of the Schematic Design Phase shall be considered Basic Service and not an Additional Service. Adjustments to the MACC and, post Design Development Phase Additional Services shall be in accordance with paragraph 7.1.4 below.

7.1.3 When the MACC is exceeded in any subsequent submittal prior to the negotiated maximum price and execution of the GMP Amendment, the Owner may:

a. Pending funds availability, give written approval of an increase in the MACC; or

b. Cooperate with the Design Professional and the Construction Manager at Risk in revising the Project Scope to reduce the Probable Construction Cost; or
c. Terminate this Agreement in accordance with Article 14.

7.1.4 If the Owner elects to reduce the Probable Construction Cost following the completion, and approval by the Owner, of the Design Development or Construction Document Phases, the Owner shall cooperate with the Design Professional and the Construction Manager at Risk in revising the quality and Scope of the Project; and at the expense of the Construction Manager at Risk, the Design Professional shall, as an Additional Service, modify the Drawings and Specifications as necessary to bring the Probable Cost within the MACC; except when the excess is due to changes initiated by the Owner or the Design Professional in scope, basic systems, or the kinds and quality of materials, finishes or equipment outlined by the Construction Manager at Risk in its Statement of Probable Cost prepared at the end of the Schematic Design Phase.

7.2 Adjustments to GMP after the Execution of the GMP Amendment but Before Construction Commences. Adjustments to the GMP after execution of the GMP Amendment but before construction commences may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:

7.2.1 Construction Manager at Risk shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of Construction Manager at Risk, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.

7.2.2 Changes to the GMP shall be initiated by written notice by one party to the other (“GMP Change Request”). Construction Manager at Risk shall deliver any such GMP Change Request to Design Professional and Owner’s Representative promptly after becoming aware of any Scope Change if, in Construction Manager at Risk’s opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.

7.2.3 Construction Manager at Risk shall submit its GMP Change Requests as soon as possible, and Construction Manager at Risk shall not be entitled to claim a GMP increase unless Construction Manager at Risk submitted a GMP Change Request to Owner’s Representative and to Design Professional within the earlier of (a) fourteen calendar (14) days after Construction Manager at Risk has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which Construction Manager at Risk intends to claim a Scope Change; and (c) in any event, prior to Construction Manager at Risk’s signing of a subcontract that incorporates the Scope Change into the Work.

7.2.4 Owner may, at any time, submit a GMP Amendment requesting a reduction or increase of the GMP, which shall include Owner's basis for such request.

7.2.5 Construction Manager at Risk shall work with Design Professional to reconcile all differences in its GMP Change Request with Design Professional within seven (7) days from the date of submission of the GMP Change Request. "Reconciled" means that the Construction Manager at Risk and Design Professional have verified that their assumptions about the various
categories are the same, and that identifies the reason for differences in the GMP Change Request and the Design Professional’s position. Construction Manager at Risk shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any Construction Manager at Risk claim for a GMP increase.

7.2.6 If the Reconciled GMP Change Request is not acceptable to Owner, Construction Manager at Risk agrees to work with the Owner and the Design Professional to provide a GMP Change Request that is acceptable to Owner.

7.2.7 Construction Manager at Risk agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Design Professional and Owner access and opportunity to view such documents at Construction Manager at Risk’s offices. Upon Owner's reasonable notice, Construction Manager at Risk shall deliver two copies of such documents to Owner and Design Professional at any regular meeting or at the Site.

7.2.8 GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the GMP increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the Construction Manager at Risk Fee, as proposed by the Construction Manager at Risk in its response to the Request for Proposals for the Project.

7.3 Adjustments to the GMP After Construction Begins.
Adjustments to the GMP required by Changes in the Work that occur after construction begins shall be determined by any of the methods listed in the General Conditions, unless pricing is based upon subcontractor bid pricing or unit pricing. Any changes to the GMP shall be submitted for review to the Design Professional and Owner and submitted with an MCR and Change order. If accepted, a change order will be issued through a revision to the Purchase Order.

7.3.1 The overhead and profit markup for the Construction Manager at Risk on subcontractor bid pricing shall be limited to the Construction Manager at Risk Fee.

7.3.2 The overhead and profit markup for the Construction Manager at Risk for all other changes in the Work that occur after construction begins shall be limited to the adjustment permitted under the General Conditions.

7.3.3 In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor’s Direct Costs plus the supplemental markups provided for in the General Conditions.

7.3.4 Execution by Owner. The Design Professional has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner (Director of Purchasing) may do so through a revision to the Purchase order.
**ARTICLE 8**

**COST OF THE WORK**

**8.1 Cost of the Work.** The Cost of the Work is the amount, mutually agreed between the Owner and the Construction Manager at Risk that is required to complete the Work for the Project as described in the Contract Documents, the attached matrix and the GMP Amendment through the life of the project, except for:

a. Preconstruction Work (lump sum)

b. Construction Manager at Risk Fee;

c. Fixed Amount for Specified General Conditions Work;

d. Owner directed changes;

e. Other changes due to design errors, unforeseen conditions, regulatory requirements at variance with the contract documents;

f. New Mexico Gross Receipts Tax

**ARTICLE 9**

**COSTS EXCLUDED FROM COST OF THE WORK**

**9.1 Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work: (Not To Be Reimbursed)

1. Construction Manager at Risk's capital expenses, including interest on the Construction Manager at Risk's capital employed for the Work.

2. Any cost associated with the Project not specifically and expressly described in Cost of Work.

3. Costs due to the fault or negligence of the Construction Manager at Risk, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.

4. The cost of correction of any repair work, nonconforming or defective work, or warranty work.

5. Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith.

6. Fines and penalties.
7. The cost of Construction Manager at Risk Field Work in excess of the fixed amount agreed for Construction Manager at Risk Field Work in the GMP.

8. Any costs in excess of the GMP

9. Meals and entertainment

10. Legal costs and fees

11. Living allowances

12. Travel/Mileage

13. Any costs or expenses for employee benefits, including but not limited to vacations, fringe benefits, taxes, contributions, or any other costs associated with employee compensation which exceed 40% of actual pay for any individual. All such allowed costs shall be paid at actual cost verified by documentation which shall be provided to the Owner upon request.

ARTICLE 10
DISCOUNTS, REBATES AND REFUNDS

10.1 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the Construction Manager at Risk shall accrue to Owner, including salvage value of recyclable material. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and the Construction Manager at Risk shall make provisions so that they can be secured.

10.2 Amounts Credited to Owner. Amounts which accrue to Owner in accordance with the provisions of the contract shall be credited to Owner as a deduction from the Cost of the Work.

ARTICLE 11
SUBCONTRACTS AND OTHER CONTRACTS

11.1 General Subcontracting Requirements. Other than Work for Preconstruction, Specified General Conditions Work and Work performed pursuant to this Contract, Construction Manager at Risk shall subcontract the Work to Subcontractors other than the Construction Manager at Risk.

11.1.1 The Construction Manager at Risk shall specify what percentage of the guaranteed maximum price and/or trade category or systems, the Construction Manager at Risk will bid to perform with its own work forces. The Construction Manager at Risk shall seek to develop subcontractor interest in the Project and shall furnish to the CNM Governing Board or its duly appointed designee(s) and the Design Professional a list of subcontractors who state in writing that they are a responsible bidder or a responsible offeror, and identifying suppliers who are to furnish materials or equipment. The CNM Governing Board, either by itself or through its duly
appointed designee and the Design Professional, shall promptly respond in writing to the Construction Manager at Risk if the governing body or their designee(s), Design Professional, knows of any objection to a listed subcontractor, and shall otherwise comply with N.M. Stat. Ann. § 13-1-124.5(B). The Construction Manager at Risk shall comply with the terms of N.M. Stat. Ann. § 13-1-124.5(C).

11.2 Construction Manager at Risk’s Obligations under Subcontracts.

11.2.1 No use of a Subcontractor or supplier shall relieve the Construction Manager at Risk of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in this Contract, the Construction Manager at Risk shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The Construction Manager at Risk shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the Construction Manager at Risk and any such Subcontractor or supplier.

11.2.2 The Construction Manager at Risk shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. Construction Manager at Risk shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of Construction Manager at Risk to incorporate the provisions of this Contract in each subcontract. The Construction Manager at Risk shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

11.2.3 Subcontractor Fair Practices Act

11.3 Subcontractor Selection.
Unless otherwise provided under this contract, the selection of all Subcontractors and suppliers shall be made by competitive or negotiated Offers. Competitive Offers shall be made in a manner that will not encourage favoritism or substantially diminish competition. Negotiated Offers shall be conducted in a manner offering best value to the Owner. The process for making Competitive Offers shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

11.3.1 Construction Manager at Risk shall submit to Owner’s Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. The Owner’s authorized Representative will provide its comments within seven (7) calendar days of receipt of the documents for review. Construction Manager at Risk shall consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, Construction Manager at Risk shall submit to the Owner an Offer comparison in a mutually agreeable form together with any specific back-up requested by Owner. The competitive process used to award subcontracts by the Construction Manager at Risk may be monitored by the Owner’s Representative; provided that such monitoring shall not excuse Construction Manager
at Risk from compliance with the subcontracting requirements of this Contract. Construction Manager at Risk shall cooperate in all respects with Owner's monitoring. The Owner’s Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and Construction Manager at Risk shall provide him or her with a summary or abstract of all Offers in a form acceptable to the Owner’s Representative, and copies of particular Offers if requested, prior to Construction Manager at Risk’s selection of Offerors. Prior to opening Offers, the Construction Manager at Risk agrees to disclose in writing to Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of Construction Manager at Risk.

The following minimum requirements apply to the Subcontract solicitation process:

The Construction Manager at Risk, in cooperation with the Owner and design professional, shall be responsible for the solicitation of the subcontractors, sub-subcontractors and suppliers as necessary, to submit offers for CONSTRUCTION MANAGER AT RISK consideration of their portion of the work. In addition to offers to perform the work, the subcontractors, sub-subcontractors and suppliers shall be required to provide documentation that they are in fact a qualified, responsible Offeror, duly licensed and registered with the State of NM Department of Workforce Solutions.

The Construction Manager at Risk shall develop bidders’ interest in the Project. The Construction Manager at Risk shall seek to develop subcontractor interest in the Project and shall furnish to the Owner’s representatives from both purchasing and facilities and to the Design Professional for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work exceeding $20,000.00 in costs.

The Construction Manager at Risk may conduct a pre-proposal meeting with potential Offerors to discuss the project scope of work and the CMAR method of construction. Potential Offerors will be advised that any subsequent award of a contract will be based on the qualifications of the Offeror and not price alone.

The date, time, and location of any pre-proposal conference and due date for offer should be advertised in a local paper of circulation at a minimum of 10 days prior to the scheduled due date of the offers or posted in an alternative public offering (website, plan room, etc.).

Once all proposals have been considered, the Construction Manager at Risk shall prepare a report in writing to the Owner listing the proposed subcontractors offers. The Owner and Design Professional shall review the report and respond in writing to any objections they may have to a particular Offer. The Construction Manager at Risk shall be responsible for any investigations necessary to either confirm or deny the objection(s).

a. Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CONSTRUCTION MANAGER AT RISK shall time-stamp all Offers as received. If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by
CONSTRUCTION MANAGER AT RISK), written approval by Owner shall be required to accept the Offer.

b. CONSTRUCTION MANAGER AT RISK may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that CONSTRUCTION MANAGER AT RISK determines meet the prequalification standards, with Owner’s prior written approval of such prequalification process.

c. CONSTRUCTION MANAGER AT RISK shall comply, and require Subcontractor compliance with, New Mexico Department of Workforce Solutions’ prevailing wage rates as specified in the Contract.

d. Owner may at its sole discretion, require CONSTRUCTION MANAGER AT RISK to re-solicit for Offers based on the same or modified documents.

e. CONSTRUCTION MANAGER AT RISK shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.

f. The CONSTRUCTION MANAGER AT RISK will document any and all discussions, questions and answers, modifications and responses to from any Offeror and ensure that the same are distributed to all Offerors, and Owner shall be entitled to inspect such documentation on request.

g. CONSTRUCTION MANAGER AT RISK shall determine the lowest Offer for each solicitation that meets CONSTRUCTION MANAGER AT RISK’s reasonable performance standards for the components of the Work at issue; provided that if CONSTRUCTION MANAGER AT RISK determines it is unable to execute a suitable subcontract with such Offeror, CONSTRUCTION MANAGER AT RISK may, with Owner’s prior approval, execute a subcontract with the second-lowest Offeror pursuant to the contract.

11.3.2 Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require CONSTRUCTION MANAGER AT RISK’s agreement to establish and implement qualification and performance criteria for Offerors, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor work; design-build work or, where an alternative contracting method that can be demonstrated to clearly benefit Owner.

11.3.3 Construction Manager at Risk shall notify Owner in writing in advance before award of any proposed subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and subcontract or supply contract awards, based on legal standards of responsibility. Such approval, or disapproval, will be provided within seven (7)
calendar days of receipt of Notice of Award of any proposed subcontract. Owner shall not unreasonably disapprove any proposed Subcontractor or supplier. Any increased costs due to Owner's disapproval shall be cause for an increase in the GMP.

11.3.4 Construction Manager at Risk’s subcontracting records may not be considered public records unless required by law; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

11.3.5 All subcontractors shall be required to follow all applicable requirements of the contract documents and laws.

11.4 Construction Manager at Risk Field Work.

11.4.1 The Construction Manager at Risk or its Affiliate may provide Construction Manager at Risk Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.

11.4.2 Except as provided in the contract, any other portion of the Work proposed to be performed by Construction Manager at Risk or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of the contract.

11.5 Subcontracting by Construction Manager at Risk.

11.5.1 The Construction Manager at Risk or its Affiliates may submit an Offer in accordance with the contract to do Work with its own forces, provided all contractual and legal requirements are met.

11.5.2 For those items for which the Construction Manager at Risk or any of its subsidiaries intend to submit an Offer, such intent must be provided with the solicitation for Offers required by the contract, and Owner must be notified in writing. All Offers for this work shall be delivered to Owner, and opened by Owner at a pre-determined location.

11.6 Protests. Construction Manager at Risk, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner. Construction Manager at Risk shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. Construction Manager at Risk shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. Construction Manager at Risk shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this contract are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offer or other protester, in connection with any procurement protest or claim.
ARTICLE 12
ACCOUNTING RECORDS

12.1 Accounting; Audit Access. The Construction Manager at Risk shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's Representatives shall be afforded reasonable and regular access to the Construction Manager at Risks records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Construction Manager at Risk shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

12.2 Periodic and Final Audits. Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The Construction Manager at Risk shall cooperate fully with Owner in the performance of such audits.

ARTICLE 13
PROGRESS PAYMENTS

13.1 Integration with the General Conditions. The requirements of this Article 13 are in addition to, and not in lieu of, the requirements of the General Conditions.

13.2 Progress Payments. Based upon applications for payment submitted pursuant to the General Conditions, Owner shall make progress payments of the Preconstruction Fee, Cost of the Work, Specified General Conditions, and associated Construction Manager at Risk Fee, to the Construction Manager at Risk as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

13.3 Percentage of Completion. Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment.

13.4 Calculation of Payment for Preconstruction Services. Payment for Preconstruction Services shall be based upon the Construction Manager at Risk's Preconstruction Work Plan attached to this Agreement as an exhibit/form to the contract. Payment will be made on a task basis for Preconstruction Services completed by the Construction Manager at Risk and accepted by the Owner.

13.5 Calculation of Payment during the Construction Phase. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

   a. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values;
b. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with the General Conditions;

c. Add the Specified General Conditions. The Fixed Cost of Specified General Conditions shall be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the Construction Phase;

d. Add the Construction Manager at Risk’s Fee. The portion of the Construction Manager at Risk’s Fee payable shall be an amount that bears the same ratio to Construction Manager at Risk Fee as sum of the amounts in subparagraph (a) and (b) above bears to the Cost of the Work in the GMP.

e. Subtract the aggregate of previous payments made by the Owner;

f. Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation;

g. Subtract any amounts for which the Owner’s Representative has withheld or nullified payment as provided in the Contract Documents.

**ARTICLE 14**
**TERMINATION OR SUSPENSION**

14.1 Owner's Right to Terminate Prior to Execution of GMP Amendment. Prior to execution by both parties of the GMP Amendment, the Owner may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the Construction Manager at Risk shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If Owner terminates for convenience during the Preconstruction Phase, Owner shall be entitled to copies of, and shall have the right to use, all work product of Construction Manager at Risk and its Subcontractors performed to the date of termination, and Construction Manager at Risk shall deliver copies of the same to Owner on request.

14.2 Owner's Termination for Convenience after GMP Amendment. After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner for convenience pursuant to the General Conditions and termination provisions described in the RFP or other contract documents. The Construction Manager at Risk shall be entitled to payment for the Work executed plus Specified General Conditions prorated to the date of termination, plus the Construction Manager at Risk's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP.

14.3 Owner’s Termination for Cause. In the event of termination of this Agreement by Owner for cause pursuant to the General Conditions or otherwise agreed to in the contract documents, the amount, if any, to be paid to the Construction Manager at Risk after application of the General Conditions and Owner’s rights at law shall not exceed the amount the Construction
Manager at Risk would be entitled to receive under the General Conditions or other contract documents.

14.4 Construction Manager at Risk Termination for Cause. If Construction Manager at Risk terminates this Contract for Owner's material breach, the amount to be paid to Construction Manager at Risk shall not exceed the amount Construction Manager at Risk would have been entitled to receive under Article 13 of this agreement through the date of termination and demobilization from the Project, with the Construction Manager at Risk Fee prorated based on the actual Cost of the Work through the date of termination.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1 Representations. Construction Manager at Risk represents and warrants to Owner as of the effective date of this Contract that the Construction Manager at Risk's Project Manager identified in Article 4 are duly appointed representatives and each has the authority to bind the Construction Manager at Risk to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

ARTICLE 16
MISCELLANEOUS

16.1 Headings. The headings used in the Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

16.2 Merger. The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. Construction Manager at Risk, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

16.3 Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of the State of New Mexico and/or CNM for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Legislature and/or CNM, this Agreement shall terminate upon written notice being given by CNM to the Construction Manager at Risk. CNM's decision as to whether sufficient appropriations are available shall be accepted by Construction Manager at Risk and shall be final.

RELEASE. The CONSTRUCTION MANAGER AT RISK, upon final payment of the amounts due for the Project, releases CNM, its governors, officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement as it pertains to the Project.
The CONSTRUCTION MANAGER AT RISK agrees not to purport to bind CNM or the state of New Mexico to any obligation not assumed herein by CNM or the State of New Mexico, unless Design Professional has express written authority to do so, and then only within the strict limits of that authority.

CONFIDENTIALITY. Any confidential information provided to or developed by CONSTRUCTION MANAGER AT RISK in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the CONSTRUCTION MANAGER AT RISK without prior written approval of CNM.

CONFLICT OF INTEREST. The CONSTRUCTION MANAGER AT RISK 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 Agreement. CONSTRUCTION MANAGER AT RISK shall comply with any applicable laws that govern this provision.

GOVERNING LAW/INTERPRETATION
The laws of the State of New Mexico shall govern this Agreement. In no event shall any portion of this Agreement be interpreted against a party on the grounds that such party drafted the provision in question. Both parties acknowledge having had ample opportunity for review and comment by their attorneys and both parties having participated in drafting this Agreement as a whole.

THIS CONTRACT is executed in an original 4 copies of which one is to be delivered to the Construction Manager at Risk and the remainder to Owner.

CONSTRUCTION MANAGER AT RISK:

Name of Firm: ______________________________

Address: __________________________________

Construction Manager at Risk's Federal I.D. No: _________________

Construction Manager at Risk’s New Mexico Contractor’s License No: _________________

Construction Manager at Risk’s New Mexico Gross Receipts Tax No: _________________

______________________________________________
Signature of Authorized Representative of CONSTRUCTION MANAGER AT RISK

Title_____________________________________

Date__________________

____________________________________________________________
OWNER:

_________________________________________
Signature of Owner’s Authorized Representative

Title_____________________________________

Date_____________________________________

Printed name:

______________________________________

OWNER:

_________________________________________
Signature of Owner’s Authorized Representative

Title_____________________________________

Date_____________________________________

Printed name:

______________________________________

NOTE TO DRAFTER:

This Matrix is keyed to the Agreement Between the Owner and the Construction Manager at Risk Exhibit 2, the General Conditions of the Construction Manager at Risk Agreement Exhibit 1, Supplementary Condition Exhibit 3 and Division 1, Exhibit 4.

THE MATRIX SHOULD BE REVIEWED WITH EACH SOLICITATION TO ENSURE THAT THE APPROPRIATE PARAGRAPHS ARE REFERENCED.
### ATTACHMENT ONE - SUMMARY MATRIX OF COST ALLOCATION

**DOCUMENT: AGREEMENT BETWEEN THE OWNER AND THE CONSTRUCTION MANAGER AT RISK**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DOCUMENT REFERENCE</th>
<th>CMAR FEE</th>
<th>SPECIFIED GENERAL CONDITIONS</th>
<th>COST OF THE WORK</th>
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<tr>
<td>CM at Risk Field Work</td>
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<td>Construction Management Services</td>
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<td>CM at Risk's Project Staff</td>
<td>ARTICLE 4.5</td>
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<td>CM at Risk Fee</td>
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<td>Subcontractor Selection</td>
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<td>Construction Manager At Risk Field Work</td>
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<td>Protests</td>
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**DOCUMENT: GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER AT RISK AGREEMENT**

Agreement between CONSTRUCTION MANAGER AT RISK and CNM for P-348
Review of Contract Documents and Field Conditions  ARTICLE 3.2.1 - 3.2.2  X

Non Resident Contractor's Requirements for NMGRT Bond  ARTICLE 3.7.2  X

Permits and Fees  ARTICLE 3.8.1-3.8.2  X

Superintendent  ARTICLE 3.11  X

Contractor's Construction Schedule  ARTICLE 3.12  X

Weekly Progress Meeting  ARTICLE 3.12.3  X

Progress Report  ARTICLE 3.13.2  X


Documents and Samples at the Site  ARTICLE 3.13, 3.14  X*  X*

Shop Drawings, Product Data and Samples  ARTICLE 3.13, 3.14  X*  X*

Use of Site  ARTICLE 3.15.2-3.15.5  X

Use of Site  ARTICLE 3.15.7  X


Cleaning Up  ARTICLE 3.17.1  X

Payments and Completion  ARTICLE 9  X

Protection of Persons and Property  ARTICLE 10.2.3  X

Insurance  ARTICLE 11.1  X

Builder's Risk Insurance  ARTICLE 11.5  X

Performance and Payment Bonds  ARTICLE 11.6  X

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**DOCUMENT:**

**DIVISION 1**

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<td>Field Engineering</td>
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Agreement between CONSTRUCTION MANAGER AT RISK and CNM for P-348
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<td>Pre-Construction Conference</td>
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<td>Progress Meetings</td>
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<td>Pre-Installation Conferences</td>
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<td>Site Mobilization Plan</td>
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<td>Communications</td>
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**Summary of Matrix of Cost Allocation - continued**
Fencing Section 01 50 00 Paragraph 1.9  
Barriers and Protection Section 01 50 00 Paragraph 1.10  
Protection of Existing and Installed Work Section 01 50 00 Paragraph 1.11  
Temporary Fire Protection Section 01 50 00 Paragraph 1.12  
Temporary Erosion and Sediment Controls Section 01 50 00 Paragraph 1.13  
Access Section 01 50 00 Paragraph 1.14  
Field Facilities Section 01 50 00 Paragraph 1.15  
Temporary Sanitary Facilities Section 01 50 00 Paragraph 1.16  
Drinking Water Section 01 50 00 Paragraph 1.17  
Project Signs Section 01 50 00 Paragraph 1.18  
Bulletin Board Section 01 50 00 Paragraph 1.19  
Removal of Utilities, Facilities and Controls Section 01 50 00 Paragraph 1.20  
Location of Underground Utilities Section 01 70 00 Paragraph 1.2  
Starting of Systems Section 01 75 00 Paragraph 3.1  

Summary of Matrix of Cost Allocation - continued

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DOCUMENT REFERENCE</th>
<th>CMAR FEE</th>
<th>SPECIFIED GENERAL CONDITION</th>
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Agreement between CONSTRUCTION MANAGER AT RISK and CNM for P-348
Operations and Maintenance Data  Section 01 78 00  X*  X*
Paragraph 1.1

Warranties  Section 01 78 00  X*  X*
Paragraph 1.2

Certificates of Inspection and Compliance  Section 01 78 00  X*  X*
Paragraph 1.3

Insurance Information  Section 01 78 00  X*  X*
Paragraph 1.4

Maintenance Tools  Section 01 78 00  X*  X*
Paragraph 1.5

Extra Materials  Section 01 78 00  X*  X*
Paragraph 1.6

Keys  Section 01 78 00  X*  X*
Paragraph 1.7

Equipment Inventory and Roofing Data Collection  Section 01 78 01  X*  X*

Demonstration and Training  Section 01 79 00  X*  X*

3-Year Extended Service & Maintenance **  Section 01 93 10  X*

* - The cost to the CM at Risk to ensure that these activities are accomplished in accordance with the Contract Documents is a Specified General Conditions Cost. The cost of the items themselves is a Cost of the Work.

**An Alternate amount shall be listed for separately-contracted Cost of the Work of the “3-Year Extended Service & Maintenance” covered by Section 01_9310 in the Project Manual and shall be considered mandatory and separate from the Cost of the Work included in the GMP amount. Include the amount for this Alternate in Attachment E and note as separate and not included in Cost of Work.