Design Professional Services for Landscape Architecture and Related Services

Project #1 ATC Turf Removal

THIS DESIGN PROFESSIONAL SERVICES AGREEMENT, including all exhibits thereto ("Agreement"), made this day of , 2013, by and between Central New Mexico Community College ("CNM" or "Owner") and _____("Design Professional").

Recitals:

WHEREAS CNM determined that the Design Professional's proposal as being the most advantageous and awarded the work to Design Professional per RFP P-329;

WHEREAS CNM and Design Professional desire to enter into a written agreement for Landscape Design and related services;

NOW, THEREFORE, the parties agree as follows:

ARTICLE ONE

STATEMENT OF WORK

1.0 Design Professional shall provide landscape design and related services related to the design and development for Project #1 **ATC Turf Removal** at CNM, as more fully described in this Agreement (the "Work").

ARTICLE TWO

CNM'S RESPONSIBILITIES

2.0 CNM agrees to contract with and does hereby contract with the Design Professional, under the terms and conditions of this Agreement, to perform for CNM professional landscape Design Professional and related services as described in this Agreement, including without limitation the Design Professional proposal that includes compensation for the different phases of the project described in Exhibit A, and incorporated herein by reference.

2.1 CNM shall designate a representative ("Facilities Representative") to communicate on its behalf with the Design Professional. The Facilities Representative, or his designee, shall have authority to give general direction to the Design Professional, to answer questions with respect to the Project, to review and process pay applications subject to other required approvals, and to initiate the change order process. CNM by and through its Facilities Representative, Purchasing Officer and/or Office of Vice President for Finance & Operations shall administer this Agreement and shall have the authority to 1) modify or interpret this Agreement, 2) to authorize the Design Professional to perform special services as defined in Article V (Special Services) of this Agreement, or 3) to approve change orders, all of which are decisions which are to be made by CNM.

2.2 CNM shall give thorough consideration to all sketches, estimates, working drawings, specifications, proposals and other documents submitted by Design Professional.

2.3 CNM shall give Design Professional written notice of any change in the quality and scope of the Project.

ARTICLE THREE

SCOPE OF WORK AND DESIGN PROFESSIONAL'S SERVICES RELATED TO LANDSCAPE ARCHITECTURE

For all of the services in this Article 3 of the Agreement, the Design Professional shall be compensated per the terms set forth in Exhibit A, Section I of this Agreement, except for those items described as additional services, described in Article 5 or reimbursable services, described in Article 6 which shall be compensated per the terms set forth in Exhibit A,of this Agreement. All Services are considered basic services unless otherwise indicated or agreed too under Additional Services or Reimbursable Services.

The scope of the project will be as follows:
The scope is for Design Professional Services related to the ATC landscape and irrigation remodel (Turf Removal Project # 1). All preconstruction work including selection of contractor must be complete on or before _____. The Design Professional shall only be responsible for the Design Professional's immediate scope of work as described in the RFP P-329. The Design Professional will endeavor to complete that scope with sufficient time for bidding and construction. This time frame may not include CNM's internal review requirements or review time by C.I.D. Completion of the entire project will primarily be the responsibility of the general or landscape contractor as required.

As part of this project The Design Professional firm shall also provide the following:

1. Full construction observation services as required by agency having jurisdiction on the landscaped property.
2. Provide various campus and community meetings to seek input into the design of the renovation. The Design Professional firm shall perform the services expeditiously as is consistent with the professional skill and care which is ordinarily applied by Design Professionals of good standing with the New Mexico Board for Registration of Landscape Architects. Within 15 days of the award of a purchase order, the Design Professional shall submit for CNM's approval a schedule for the performance of the Design Professional's service, and shall include allowances for periods of time required for the review and approval of submissions to CNM and any other agency having jurisdiction and the orderly progress of the Work. Time limits established by this schedule and approved by CNM shall not be exceeded, except for reasonable cause.
3. The Design Professional shall provide a full Professional Team: As appropriate to the scope of the work and for the performance of the services required by the Agreement. The Design Professional will employ the services of consulting engineers so as to provide a full professional team as dictated by the disciplines of Design Professional and engineering design involved in the Work.
4. Review and comply with laws, codes, and regulations applicable to the design incorporating requirements imposed by governmental authorities having jurisdiction over the project such as EPA, AMAFCA, State of New Mexico, City of Albuquerque, and County of Bernalillo.
5. Consider and advise the Owner of the comparative values of alternative materials, building systems and equipment relative to construction, maintenance, and life cycle costs to achieve a design appropriate for the Owner's program and suitable for the Project Budget, within the reasonable limits of the scope.
   A. Programming Phase

a. The Design Professional shall develop a written program to ascertain the requirements of the Project and shall review the understanding of such requirements with the Owner.
    i. The Design Professional shall investigate existing conditions or existing facilities and list spaces that will be affected by the renovation
b. Meet with local governmental agencies to obtain prior approval.

B. Design Phase
a. Drawings and Specifications. Based on the program, project schedule and delivery method, Project site, Budgeted Cost of the Work, and preparatory surveys, test, and consultants' reports, and any agreed adjustments thereto, the Design Professional shall prepare schematic drawings for the Design Phase Plan Submittal.
b. The Design Professional shall provide the Owner with a preliminary estimate of construction cost prior to beginning the Construction Document Phase. Based upon the Design Professional's statement of probable cost, the Owner shall provide the Design Professional with an Approved Budget for the project.

C. Construction Document Phase
a. Authorization. The Owner's formal approval of the Design Phase drawings and further adjustments in the scope and quality of the project, and outline specifications shall constitute authority for the Design Professional to proceed with the completion of final plans and specifications.
b. Final Drawing and Specifications. Based on CNM Design phase documents, any further adjustments in the scope quality and the Cost of work, the Design Professional shall prepare Construction documents consisting of final plans and specifications setting forth in detail the requirements for the construction of the Project. The drawings shall incorporate the resolutions of CNM comments and shall be complete as required for the entire project.
c. The Design Professional shall be responsible, for obtaining all design related permits and approvals required by the governmental authorities having jurisdiction over the projects.
d. The Review of the Construction Documents by the Owner shall not relieve the Design Professional of responsibility for code compliance, design deficiencies, omissions and errors.
e. The Design Professional shall endeavor to manage the design to stay within the approved budget determined at the end of the Design Phase. The Design Professional shall review the Construction Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner and General/Landscape Contractor.
f. The Design Professional shall advise the Owner on matters such as construction phasing and scheduling, bid or proposal alternates, liquidated damages, construction time period and other construction issues appropriate for the project.
g. The Design Professional shall assist the Owner in the preparation of the necessary bidding information, bidding forms, RFP information, and Conditions of the Contract.

D. Construction Observation

a. The Construction phase shall commence with the acceptance award of bid for landscape construction and an issuance of the notice to commence on site work or notice to proceed with construction services and terminate when all the project Design Professional's services have been satisfactorily performed.
b. The Design Professional shall perform Construction Contract Administration consistent with the General Conditions of the Contract and in accordance with CNM procurement procedures.
c. The Design Professional shall assist the Owner in making arrangements for the Pre construction conference and shall assist in the pre construction conference and shall distribute copies to all parties.
d. The Design Professional shall provide engineering certification as required by the State CID.
e. The Design Professional will be a representative of the Owner during the construction and in this capacity will endeavor to (a) guard the Owner against variances requirements of the Contract Documents by the Contractor, (b) require the Contractor to complete the work within the time specified in the Construction Contract or subsequently extended by the Owner, (c) and guard the Owner against defective work. The Design Professional will advise and consult with the Owner regarding the performance and progress of the Contractor and regarding solutions to conditions or problems that may arise out the design or construction. The Design Professional shall have authority to act on behalf of the Owner to the extent provided in the General Conditions of the Contract, which may only be modified in writing.
f. Instructions to the General Contractor shall be communicated through the Design Professional.
g. In response to questions from the Contractor or Owner about the Contract Documents, or as the Design Professional deems appropriate, the Design Professional shall provide interpretations and clarification of the Contract Documents that are consistent with the intent of and reasonably inferable from the Contract Documents. Interpretations and clarifications shall be in the form of written explanation or directions and/ or supplementary details or drawings, whichever is required to complete, explain or make definite and of the provisions of the Drawings and Specification and give them due effect.
h. The Design Professional shall respond to questions about the Contract Documents in a timely manner consistent with the terms of the Contract Documents.
i. Decisions by the Design Professional, including interpretations and clarifications of the Drawings, Specification, or other Contract Documents, and directions, or decisions regarding performance of the work, shall be in writing and shall be advisory to the Owner.
j. Project Record. The Design Professional shall maintain the Project Record consisting of project related correspondence, memoranda, notes, Statement for Services, and related documents, Application and Certification for Payments and Related Documents, minutes of the meeting, and inspection reports issued or received by the Design Professional. The Owner shall have access to the Project Record during the Design Professionals normal office hours. If requested to reproduce the project record, or significant portions of it, for the Owner, the Design Professional will do so as a Reimbursable Expense.

k. Communications: So as to maintain continuity in the Design Professional's administration of the Construction Contract and performance of the work by the Contractor, and to facilitate complete documentation of the project record, all communications between the Contractor and the Owner regarding matters of or related to the Contract shall be directed through the Design Professional with copy furnished to the Owner, unless direct communication is otherwise required to effect legal notifications. Unless otherwise authorized by the Design Professional, communication by and with the Design Professional's consultants shall be through the Design Professional. Unless otherwise authorized by the Contractor, communications by and with Subcontractors and material suppliers shall be through the Contractor.

l. Submittal review: The Design Professional shall review the Contractor's submittals for conformance with requirements of, and the design concept expressed in, the Contract Documents and approves or takes other appropriate action upon them.

1. This review is not intended to verify the accuracy and completeness of details such as dimensions and quantities or to substantiate installation instructions or performance of equipments and systems, all of which shall be the responsibility of the Contractor. However the Design Professional shall advise the Contractor of any errors or omissions which the Design Professional may detect during this review.
2. As provided in the General Conditions of the Contract, the Design Professional is not authorized to approve any deviations from the requirements of the Contract Documents. Deviations may be authorized only by the Owner through a Change Order.
3. The Design Professional will review and respond to all submittals with reasonable promptness to avoid delay in the work or in the activities of the Owner, Contractor or separate contractors.
4. Within thirty days after Substantial completion of the Work by the Contractor the Design Professional will furnish the Owner one complete set of the Contractor's approved submittals, organized in a logical manner.
5. The Design Professional may specify any scheduling method or format that the Design Professional considers to be appropriate for the Project and which is acceptable to the Owner, but the Design Professional shall also require the Contractor to prepare and update the progress schedule in accordance with the General Conditions of the Contract. The Design Professional shall promptly deliver a copy of the Contractor's approved Progress Schedule and Report, and any revisions to it, to CNM.
6. The Design Professional shall require the Contractor to update the Progress Schedule and Report with each monthly Application for Payment and shall otherwise monitor and keep the Owner appraised of the Contractor's progress.

m. Observations: The Design Professional shall coordinate, schedule and conduct the Scheduled Observations and conferences defined in the Contract Documents and as are appropriate to the scope of the Work. The Design Professional shall perform periodic Observations defined in the Contract Documents. The Design Professional shall attend Specified Inspections and Tests defined in the Contract

Documents when attendance by the Design Professional is specified or is otherwise appropriate.

1. Definitions. The Design Professional's "observation" means the service performed by the Design Professional through which the Design Professional:
    i. Becomes generally familiar with the in-progress and completed Work and the quality of the Work.
    ii. Determines whether the Work is progressing in general accordance with the Contractor's schedule and is likely to be complete within the Contract Time.
    iii. Visually compares readily accessible elements of the Work to the requirements of the Contract Document to determine, in general, if the contractor's performance of the Work indicates that the Work will confirm to the requirements of the Contract Documents when completed.
    iv. Endeavor to guard the owner against Defective Work, but does not include making exhaustive investigations or examinations of the in-progress or completed portions of the Work to expose the presence of the Defective Work.
    v. Reviews and addresses with the Contractor any problems in implementing the requirements of the Contract Documents and the Contractor may have encountered,
    vi. Keeps the Owner fully informed about the Project
2. Frequency. The Design Professional's periodic Observations shall be at intervals appropriate to the stage of the of the Contractor's operation and consistent with the size and nature of the Work. But not less than an average of once per week while construction is on- going. The performance of the requirement may be waived during periods in which weather or other conditions delay progress, or during slow phases of the construction, making weekly inspections unwarranted.
3. Reporting. The Design Professional shall promptly prepare a complete report of each Observation by the Design Professional, Design Professional's representative, and promptly furnish a copy of each report to the Owner and Contractor. The Design Professional shall prepare and distribute a field observation report weekly during construction, for weeks during which observations are unwarranted, the Design Professional shall state in the report that no inspection was performed and why.
4. Stopping the Work: The Design Professional shall notify the Owner of a need to stop work when, in the Design Professional's opinion, such stoppage is necessary to avoid defective work.
5. Certification for Payment: The Design Professional shall review and approve as appropriate the Contractor's monthly and final Application for Payment and issue Certification for payment in accordance with the General Conditions of the Contract.
6. The Design Professional shall be required to withhold payment for completed or partially completed Work for which compliance with the Contract Documents remain to be determined by Specified Inspections or Final Inspections to be performed by their proper sequence. If payment is being requested on an Application for Payment including the Work in Questions, The Design

Professional will notify the Contractor and the Owner and the amount in question will be transferred into an escrow account in accordance with the New Mexico Prompt Payment Act.

7. Contract Change Orders. The Design Professional shall administer the Change Order Procedures provided in the General Conditions of the Contract.
8. The Design Professional is authorized to make minor changes in the work by written order to the Contractor. Minor changes in the Work are defined as those which are in the interest of the Owner do not materially alter the quality price, and performance of the finished work. Changes that involve an increase to the contract cost are authorized only by the Owner through a Contract Change Order.
9. The Design Professional shall prepare details, supplemental drawings, specifications, or other descriptive documents necessary to sufficiently delineate, for Contractor pricing and performance, proposed changes in the Work directed or authorized by the Owner.
10. The Design Professional (and the Design Professional's consultant, when appropriate) will review and evaluate change order proposals and claims for extra work as may be submitted by the Contractor.
11. Using the change modification form, the Design Professional shall recommend, as applicable, the Contractor's proposals for acceptance by the Owner. Each recommendation of acceptance will be based upon the Design Professional's professional opinion that a proposal is complete, in conformance with the Contract Documents, represents fair and reasonable pricing, and justifies change order action in the case of claims for extra work or does not warrant procurement by competitive bid in the case of added work. Determination of the legality of a change order shall be the responsibility of CNM Purchasing Department and CNM legal Advisor.
12. The Design Professional shall prepare Contract Change orders for acceptance and execution by the Contractor and Owner. Construction Change orders shall sufficiently describe the change(s) in Work so that the requirements of the Contract Documents are clearly determinable with reasonable ease.
13. The reasonable preparation of details, supplemental drawings, specification, or other documents to describe a change in the work shall be included in the Design Professional's Basic Fee.
14. As-Built Documents: "As Built" Documents shall be prepared and furnished by the Contractor in accordance with the General Conditions of the contract. Prior to preparing bid documents, the Design Professional shall consult with the owner to determine the Owner's requirement for "As Built" Documents and shall incorporate them into the Conditions of the Contract, if they differ from those of the General Conditions, The Design Professional shall administer the "As Built" Documents requirement of the Contracts Documents, periodically endeavor to verifying the Contractor's compliance during construction and reviewing the Contractor's final documents for conformance to Contract Requirements. As-Builts are considered basic services.
15. Upon completion of the project, the Design Professional shall furnish corrected Auto Cad 2000 compatible drawings. For building additions or renovations project, CAD drawings must be furnished for the entire floor(s) affected by the

work in order for the Owner to maintain a single complete and integrated set of existing condition drawings.

16. The Construction Contract Administration phase shall terminate upon expiration of the Warranty period or settlement of all Warranty claims, whichever occurs last.
17. Prior to final payment, the Design Professional shall prepare and deliver to the Owner all record drawings and final report to the Owner.
18. Evaluations of the Owner's Approved Budget after the Design Phase shall be the MACC for the project, Statements of Probable Construction Cost, and detailed estimates of construction costs prepared by the Design Professional represent the Design Professional's best judgment as a professional familiar with the construction industry. It is recognized, that the Design Professional does not have control over the cost of labor, materials, equipment: over the Contractor's methods of determining BID/RFP or other method of procuring the construction under New Mexico State Procurement Code; over the Contractor's method of determining their price offered, market, or negotiating conditions.

ARTICLE FOUR

MACC

4.1 The MACC "Maximum Allowable Construction Cost" for this project shall be determined, with Owner approval, what materials, equipment, component systems, and types of construction are to be included in the Construction documents to bring the cost within the MACC. With the written consent of the Owner, which consent shall not be unreasonably withheld, the Design Professional may also include additive alternate and additive deducts bids to adjust the construction to a fixed limit.

ARTICLE FIVE

ADDITIONAL SERVICES

A. CNM has the right to require, and Design Professional agrees to perform, services related to the Project other than those services identified as Basic Services.

B. For services required by CNM, other than those identified as Basic Services, Design Professional shall be required to submit a detailed written proposal for performing the Special Services and a "not to exceed" fee proposal for such Special Services to CNM for its review and written approval, incorporating a declaration as to the suitability of performing work. The "not to exceed" fee proposal shall be broken down into specific hours and shall identify all subcontractor costs to perform the services and accomplish the work. CNM's approval of such proposal shall be in writing and communicated through the issuance of an approved purchase order revision issued through CNM's Purchasing Department. No payment for Special Services and no reimbursement for reimbursables in connection with such Special Services shall be made except for such Special Services performed in accordance with CNM's advance written approval.

C. Design Professional

E. Other additional services may include but not be limited to the following: Additional on-site construction administration services above and beyond basic service; additional civil engineering beyond the basic services**, additional programming beyond basic services, additional as builts beyond basic services, other services to be conducted through the Design Professional's Firm.**

ARTICLE SIX

REIMBURSABLE EXPENSES

A. Reimbursable Expenses. Reimbursable expenses of Design Professional shall include the following items
when approved in writing and in advance by CNM: (1) transportation and subsistence of principals and employees on special trips at least fifty (50) miles one-way beyond the boundaries of the CNM District which are related to the Project, to be paid at the prevailing rate of travel reimbursement being paid by CNM; (2) cost of reproduction of progress sets of plans, drawings and specifications as required for submittals and reviews (3) reasonable plan checks/review fees charged by appropriate governmental authority(s); (4) the services of geotechnical engineers, testing laboratories, and other subcontractors (not employees of Design Professional) to provide professional evaluations, recommendations and services pertaining to conditions of the site and existing improvements, including, but not limited to, tests, and surveys required to ascertain and address surface and subsurface conditions, structural integrity of existing structures, the presence of Hazardous Materials and environmental issues; (5) land surveys for property boundaries, topographical data, legal description, etc. (6) special inspections or testing, (7) specialized consulting including but not limited to the furniture or other specialized consultants, (8) reimbursable services associated with LEEDS enhance commissioning if requested ,(9) traffic impact study (10) as builts that are above and beyond basic services (Note: on site "as builts" that include field measurements are part of basic services) (11) Fundamental and Enhanced Services of the commissioning agent. (12) Other similar services through third parties

B. Payment of reimbursable expenses to Design Professional shall be paid by CNM at Design Professional's actual direct cost, up to a maximum amount agreed to by CNM. All requests for reimbursement of expenses shall be accompanied by copies of original invoices.

C. For all expenses incurred under this "Reimbursable Expenses" portion of the Design Professional Agreement, CNM may require Design Professional to obtain three quotes when practical and reasonable. Expenses incurred under this section may be obtained by competitive bids. CNM reserves the right to accept, reject, or modify any of the reimbursable quotes or bids. CNM reserves the right to use any of the quotes or bids submitted for any particular reimbursable expense. CNM may require the Design Professional to obtain three quotes for any testing performed on the Project under this "Reimbursable Expenses" section.

ARTICLE SEVEN

TERM

7.0 The term of this Agreement begins immediately upon delivery to Design Professional of a CNM purchase order incorporating this Agreement and extends through the end of the last Final Completion Phase as described above.

ARTICLE EIGHT

EMPLOYMENT OF CONSULTANTS

8.0 Design Professional agrees to employ competent and New Mexico licensed and registered structural, mechanical, electrical, civil, landscape, interior designer, surveyor, or cost estimating consultants not otherwise employed by CNM for the Project, as might be necessary for the proper design and construction of the Project. Design Professional shall furnish to CNM a list of these consultants for prior approval before engaging them for the Project. Design Professional represents that services performed by the design professionals under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under the same or similar conditions. Design Professional represents that the performance of any consultant assigned by Design Professional to work on the Project shall be in accordance with sound professional standards, and the requirements of this Agreement.

ARTICLE NINE

PROFESSIONAL LIABILITY INSURANCE

9.0 At its own expense, Design Professional shall procure and maintain during the life of this Agreement professional liability insurance in an amount not less than $50,000 ($50,0000) for each claim and in the aggregate. Insurance coverage shall not be canceled or materially changed except after thirty (30) days written notice has been provided to CNM. Design Professional shall furnish CNM copies of certificates of insurance showing the coverage, limits of liability, covered operations, effective dates and dates of expiration of policies of insurance carried by Design Professional.

ARTICLE TEN

INDEMNIFICATION AND INSURANCE

10.0 Design Professional shall indemnify and hold harmless CNM, its officers, employees and agents, against all liability, claims, damages, losses or expenses, including reasonable attorneys fees, arising out of bodily injury to persons or damage to property, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Design Professional or its officers, employees or agents. This hold harmless clause is subject to the immunities, provisions and limitations of the New Mexico Tort Claims Act (Sections 41-4-1 et seq. N.M.S.A. 1972) and Section 56-7-1, N.M.S.A. 1978 and any amendments thereto.

10.1Design Professional shall comply with all requirements of Exhibit B, Insurance Requirements, hereto.

ARTICLE ELEVEN

ASSIGNMENT AND SUCCESSORS

11.0 Design Professional agrees not to sublet, sell or assign neither this Agreement nor any portion of the Work included herein, and not to enter into a partnership for the performance of the services and work contemplated by this Agreement with any person or persons without the prior written permission of CNM. Any approved successors or assignees shall be bound to and by the same terms and conditions as Design Professional, and shall accept in writing the delegation of Design Professional's duties and responsibilities under this Agreement. Design Professional remains responsible for completion of the Project and warranties. Design Professional remains responsible for design integrity.

ARTICLE TWELVE

TIMELINESS OF PERFORMANCE

12.0 Design Professional shall perform its duties and services under this Agreement with all reasonable diligence and continuous effort, and shall not delay this Work in order to perform under contracts entered into after this Agreement.

12.1 Design Professional shall continue to perform the Work under this Agreement through all disputes, with the Owner and/or the Contractor, including but not limited to payment disputes and disputes regarding the scope of the Design Professional's obligations under the Agreement.

12.2 Timeline: It is anticipated that this Project is to have landscape/construction started in 2013.

ARTICLE THIRTEEN

OWNERSHIP OF INSTRUMENTS OF SERVICE

13.0 The Owner shall have use and rights to all electronic documents during all phases of the work. Drawings and specifications become the property of CNM. Before receiving final payment, Design Professional shall deliver to CNM the original Construction Documents. CNM does not have the right to use the working drawings and specifications for other building projects except as may be required for reference without Design Professional's consent. CNM does not have the right to sell the drawings and specifications. Design Professional shall be permitted to reuse parts of the drawings for other projects, but shall not use them as a whole without CNM's prior written permission.

ARTICLE FOURTEEN

RECORDS AND AUDIT

14.0 Design Professional shall maintain detailed time records that show the date, time and nature of services rendered. These records shall be subject to inspection by the CNM, its representatives, and the State Auditor. CNM, its representatives, and the State Auditor shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of CNM to recover excessive and/or illegal payments. CNM, its representatives and the State Auditor shall have access to and the right to examine and/or audit any directly pertinent records, books, documents and papers of Design Professional involving transactions related to this Agreement for a period of three (3) years after final payment.

ARTICLE FIFTEEN

APPLICABLE LAWS

15.0 Design Professional shall comply with all federal, state, and local laws and ordinances applicable to the Work called for herein

15.1 Design Professional shall adhere to all applicable State, Federal, local and CNM rules, laws, regulations, guidelines, the New Mexico Procurement Code, CNM's Procurement Regulations, New Mexico's Public Works Act (N.M. Stat. Ann. § 13-4-1, et. seq.), the New Mexico Prompt Payment Act, and all other applicable laws, statutes, codes, regulations, and the like, the policies and procedures associated with the Work to be performed.

ARTICLE SIXTEEN

TERMINATION

16.0 Termination for Cause. If Design Professional, for any cause, fails or omits to carry out the Work in an acceptable manner CNM may give notice in writing of such failure or omission and of a reasonable time within which to cure the deficiency. Design Professional shall take corrective measures within such time. Design Professional's

failure to comply with such notice and to cure the deficiency as provided in the notice shall subject this Agreement to immediate termination by CNM.

16.1 In the event of a for-cause termination, CNM shall terminate this Agreement by delivering to Design Professional a written notice of termination. The effective date of termination shall be the date stated in the notice or, if no date is stated, then the date of delivery of the notice. Upon such termination, the Design Professional shall deliver to CNM all design plans, construction estimates, drawings, documents, survey books, and all other materials developed under this Agreement. CNM shall then have the right to retain the services of other design professionals to complete the Design Professional's Work under this Agreement, and shall have no obligation to seek bids for that replacement design professional(s). The cost of completing the Design Professional's Work under this Agreement shall be paid for by applying the balance of the contract amount remaining on this Agreement at the time of termination. If the cost to complete the Work under this Agreement is less than the remaining contract amount, the remaining contract amount shall be paid to the Design Professional. If the cost of completing the Work under this Agreement exceeds the contract amount, then the Design Professional shall pay CNM for the difference between the contract amount and the cost to complete the Design Professional's Work.

16.2 Termination for convenience of CNM. On fifteen (15) business day's written notice to Design Professional, CNM may terminate this Agreement in whole or in part for its own convenience in the absence of any default of Design Professional.

16.3 In the event of a termination for convenience, CNM shall terminate this Agreement by delivering to Design Professional notice of termination without cause specifying the extent to which performance of Work under this Agreement is terminated and the date upon which such termination becomes effective. The effective date of termination shall be the date stated in the notice or, if no date is stated, then the sixteenth (16th) business day after delivery of the notice. Within ten (10) calendar days of the effective date of termination, Design Professional shall deliver to CNM all design plans, construction estimates, drawings, documents, survey books and any or all other materials developed under this Agreement. Upon delivery of such notice, the Design Professional shall have the right to receive payment for services satisfactorily performed to termination date, including reimbursement then due.

ARTICLE SEVENTEEN

APPROPRIATIONS

17.0 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 Design Professional. CNM's decision as to whether sufficient appropriations are available shall be accepted by Design Professional and shall be final.

ARTICLE EIGHTEEN

RELEASE

18.0 Design Professional, upon final payment to it 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 pertains to the Project.

18.1 Design Professional 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.

ARTICLE NINETEEN

CONFIDENTIALITY

19.0 Any confidential information provided to or developed by Design Professional in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Design Professional without prior written approval of CNM.

ARTICLE TWENTY

CONFLICT OF INTEREST

20.0 Design Professional 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. Design Professional shall comply with the provisions of Section 10-16-12 N.M.S.A. 1978 which requires disclosure in writing to the office of the Secretary of State of the State of New Mexico amounts received under state contracts when and if such provisions become applicable.

ARTICLE TWENTY-ONE

GOVERNING LAW/INTERPRETATION

21.0 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.

ARTICLE TWENTY-TWO

MODIFICATION OF THE AGREEMENT

22.0 This Agreement shall not be altered, changed, amended, or modified except by an instrument in writing executed by the authorized representative(s) for the Design Professional and CNM. The Design Professional and CNM may negotiate changes to this Agreement pursuant to this Article 22.

ARTICLE TWENTY-THREE

MERGER

23.0 This Agreement with its exhibits and schedules incorporates all of the agreements, covenants and understandings between the parties thereto concerning the subject matter thereof. No prior agreements or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

ARTICLE TWENTY-FOUR

CERTAIN PENALTIES

24.0 The State of New Mexico Procurement Code, Sections 13-128 through 13-1-199 N.M.S.A. 1978, imposes civil and criminal penalties for its violation. In addition the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

ARTICLE TWENTY-FIVE

NOTICES

25.0 Any notice required to be given under this Agreement shall be deemed sufficient, if given in writing and hand delivered to the following address or sent by first class mail, properly franked and addressed as follows:

If to CNM:

Central New Mexico Community College
525 Buena Vista, SE
Albuquerque, NM 87106-4096
Attn: Director, Purchasing

If to Design Professional:

Design Professional

ARTICLE TWENTY-SIX

MISCELLANEOUS

26.0 Certain Definitions.

"Detailed Estimate of Construction Cost" means a forecast of construction costs prepared on the basis of the Design Professional's detailed analysis of materials and labor for all items of construction work.

"Estimate of Probable Construction Costs" means a forecast of construction cost; may be a preliminary estimate of construction cost or a detailed estimate of construction cost.

"Preliminary Estimate of Construction Cost" means cost forecasts prepared by the Design Professional during the schematic design, design development, and construction documents phases of basic services for the owner, prepared prior to the detailed estimate of construction costs.

The terms "Construction Costs" and "Actual Construction Costs" are to be construed to be one and the same and mean the actual contract amount to be paid by CNM to the General Contractor(s) to construct the structure or facilities designed and described within the construction bidding documents. Construction costs do not include costs associated with furniture and equipment not specified within the construction bid documents.

"As-built" and "Record Documents" are to be interpreted to be one and the same and are defined as construction drawings revised to show all significant changes to the construction documents made during the construction process, usually based on marked up prints, drawings, and other data furnished by the General Contractor to the Design Professional.

“Project Program” means the written and graphic description of the Project objectives, including intended us of facilities and site, design constraints and criteria, physical parameters, spatial requirements and relationships, and requirements for special equipment, systems and materials, the results of which are to be documented in a written

Construction Contract Documents are the documents that constitute the Agreement between the owner and the General Contractor to construct the Project(s) in accordance with the bidding documents.

Telegraphic notice: notice provide via Facsimile or E-mail transmission.

MACC. Maximum Allowable Construction Cost is the total sum, excluding gross receipts tax, available for construction purposes and may include furnishings, fixtures and equipment as approved and authorized by CNM’s Governing authority. MACC shall not include professional fees, Project contingency funds, acquisition costs or other soft costs.

26.1 Attorney’s Fees. In the event of litigation with respect to or related to this Agreement or the Project, such action shall be brought in the County of Bernalillo, State of New Mexico. The prevailing party in any such litigation shall be entitled to recover reasonable attorney’s fees. The law of the State of New Mexico shall govern any litigation between CNM and the Design Professional.

26.2 Insurance Requirements. The Design Professional shall be required to carry insurance meeting the requirements in the Exhibit B hereto labeled "INSURANCE REQUIREMENTS" and as noted in the specifications. The Design Professional will be required to submit the Certificates of Insurance to CNM’s Purchasing Director prior to commencing Work under the Agreement. Insurance must remain in effect for the entire term of the Agreement.

26.3 The General Conditions attached hereto as Exhibit A are hereby incorporated to the extent they are not inconsistent with other provisions of this Agreement. In Exhibit A, “Seller” and “Contractor” mean “Design Professional.”

26.4 Contact documents. The following are contract documents which form the contract between CNM and Design Professionals for the Project, and are incorporated by reference herein as if fully set forth herein:

1) This Design Professional Services Agreement between CNM and Design Professional, and all exhibits thereto.

2) CNM Purchase Order No. PO_____ dated month, 2013 and all exhibits thereto.

IN WITNESS THEREOF, the parties hereto have executed this Agreement the day and year last set forth below.

CENTRAL NEW MEXICO COMMUNITY COLLEGE	DESIGN PROFESSIONAL
OWNER *(Signature)*	**FIRM** *(Signature)*
Keith Adams Senior Buyer *(Printed name and title)*	*(Printed name and title)*
Date: _____	Date: _____

EXHIBIT A

DESIGN PROFESSIONAL'S COMPENSATION

SECTION I

(NMGRT is not included.)

Design Professional's compensation for Basic Services is as follows:

Advanced Technology Center (ATC) Landscape and Irrigation Remodel

NOTE: All compensation excluding NMGRT provided as a result of fulfilling the services including any additional requested services described herein or as amended shall not exceed $_____

For compensation under this Section I, CNM shall make payments for the Design Professional's services, after acceptance and approval by CNM of each of the following Phases for the Project, in an amount not to exceed the amounts and percentages set forth below for the applicable Phase:

Programming

Schematic

Design Development for Landscape and Irrigation

Construction Documents Phase

Construction Observation Phase

The following provisions A, B, C, and D are applicable to both Sections I and II Compensation set forth above:

A. Design Professional may add any applicable gross receipts tax to the fees and other payments payable hereunder. **Design Professional shall use and require the use of nontaxable transaction certificates by all other parties with whom it does business in connection with performing its services under this Agreement whenever allowed by law**. In all events, Design Professional shall not include gross receipts taxes paid to others as a part of the base dollar amount upon which Design Professional calculates gross receipts taxes when billing its fees and expenses to CNM.

B. Design Professional shall present separate monthly detailed invoices and statements of the services rendered. for each Part (I and II). Design Professional's invoices shall reference the CNM purchase order number and be submitted in a format that has been reviewed and approved in writing by CNM. Payments shall be made subject to CNM's approval of the statement of the services.

EXHIBIT B INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE:

The Design Professional shall furnish the Owner one copy each Certificates of Insurance herein required for each copy of the resultant Agreement, showing the coverage, limits of liability, covered operation, and effective dates of expiration of policies of insurance carried by the Design Professional. The Design Professional shall furnish to the Owner copies of limits. The Certificates of Insurance shall be in the form of AIA Document G-705 or similar format acceptable to the Owner. Such certificates shall be filed with the Owner and shall also contain the following statements:

1. The Governing Board of Central New Mexico Community College, its agents, servants and employees are held as additional insured.

2. "The insurance coverage certified herein shall not be canceled or materially changed except after thirty (30) days written notice has been provided to the Owner."

COMPENSATION INSURANCE:
The Design Professional shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all of the Design Professional's employees , and in case of any such work being sublet, shall require the subcontractors to maintain such Worker's Compensation insurance. In case any class of employee engaged in work on the Project under this Agreement is not protected under a Worker's Compensation Statute, the Design Professional shall provide and shall cause each subcontractor or sub-subcontractor to provide Employer's Insurance in an amount of not less than $500,000.

DESIGN PROFESSIONAL'S PROFESSIONAL LIABILITY INSURANCE:
The Design Professional shall maintain professional liability insurance in the amount of at least $**50,000.00**
DESIGN PROFESSIONAL'S PUBLIC LIABILITY INSURANCE:
The Design Professional shall maintain insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-4-1 et.seq. NMSA 1978". The insurance must remain in force for the life of the Agreement including all extension or renewals. The limits effective July 1, 1992 are: $400,000 per person/$750,000 per occurrence plus $300,000 for medical and $100,000 for property damage for a total maximum liability of $1,150,000 per occurrence.

DESIGN PROFESSIONAL'S VEHICLE LIABILITY INSURANCE:
The Design Professional shall procure and shall maintain during the life of this contact Vehicle Liability Insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-1-1 et. seq. NMSA 1978". The insurance must remain in force for the life of the Agreement including all extensions or renewals. The limits effective July 1, 1992 are:

Bodily Injury	$750,000	Each Occurrence
Property Damage	$100,000	Each Occurrence

SUBCONTRACTORS' AND SUB-SUBCONTRACTORS' PUBLIC AND VEHICLE LIABILITY INSURANCE:

The Design Professional shall either:
(1) Require each subcontractor or sub-subcontractor to procure and maintain during the life of the subcontract or sub-subcontract Public Liability Insurance of the types and amounts specified above or,

(2) Insure the activities of the subcontractors or sub-subcontractors in the Design Professional's policy as required under this Article.
GENERAL:

All insurance policies are to be issued by companies authorized to do business under the laws of the state in which the Work is to be done and acceptable to Owner.
The Design Professional shall not violate, or permit to be violated, any conditions of any said policies, and shall at all times satisfy the requirements of the insurance companies writing said policies