### Attachment C
#### Part B

CENTRAL NEW MEXICO COMMUNITY COLLEGE (CNM or Owner)

General Conditions of the Agreement between the Owner and the Design Professional

*Where the Owner will use the Construction Manager at Risk Delivery Method, Part B*

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ARTICLE 1
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 referenced as an attachment to RFP# P-360. They can be found at the CNM Purchasing website for this RFP.

ARTICLE 2
DESIGN PROFESSIONAL’S SERVICES AND RESPONSIBILITIES

2.0 BASIC SERVICES

2.0 General. The Design Professional's basic services shall consist of the following and as identified in Paragraphs 2.0 through 2.8

0. General Basic Services performed throughout the project
   1. Programming Phase
   2. Schematic Design Phase
   3. Design Development Phase
   4. Construction Documents Phase
   5. Bidding Phase
   6. Construction Phase
   7. Record Document Phase
   8. Post Construction Phase

2.0.1 Owner’s Standard Documents and Construction Specifications. The Design Professional shall use the Owner’s standard documents and construction specifications in developing the procurement requirements and construction specifications, including the Contract Documents for the project. Such materials shall be modified as appropriate for the specific project by the Design Professional and submitted for review by Owner prior to issue. The Design Professional may be asked to update certain standard construction specifications as part of this project. Current versions of CNM standard General Conditions between the Owner and the CMAR and Division 01 will be provided by the Purchasing Department and posted with the website in draft form.
2.0.2 Furnishings and Equipment. If the Owner has optionally added this work as an additional provision to Other Conditions or Services (Part A of Agreement), the Design Professional shall provide all required work for estimating, design, selection, preparation of Construction Documents and bidding for the procurement of project related furniture, fixtures, and equipment. Following installation of furniture, fixtures and equipment, the Design Professional shall inspect the installation and prepare a list for items requiring correction. Upon notification from the installer that all corrections have been made, Design Professional shall again inspect the site to confirm that corrections were properly done and to authorize final payment for the furniture, fixtures and equipment. The Owner shall furnish the Design Professional a list of any free standing or existing equipment or any future purchased equipment and shall provide cut sheets to the Design Professional to ensure coordination of the information within the project.

2.0.3 BIM and CAD Methodology. For construction projects with a construction cost (MACC) of five million dollars ($5,000,000.00) or greater, the Design Professional, structural and MEP documents set shall be developed as an integrated 3D BIM model. Use of the BIM for other design team members, (i.e., civil engineers) is encouraged, but not required. Projects under the specified cost threshold may be developed by the Design Professional via either BIM or CAD. When BIM is used, the Design Professional set shall be BIM-based by 75% schematic design. Structural and MEP engineering shall be BIM based by 50% preliminary phase.

2.0.4 Document Coordination. At the onset of the project the Design Professional shall review document organization and coordination with the CNM project manager and project committee chair or other designated committee members. Based on this review, the Design Professional will issue a letter to the Project Manager describing measures to be employed by the Design Team to ensure interdisciplinary document coordination on the project. Where BIM is employed, the letter shall address the elements (Level of Detail) to be modeled, a summary of the elements that will not be relational to the BIM database, define and document formation and the intended methodology for coordination of BIM and non-BIM elements. Data and information will be input, stored, and housed in CNM’s project management software system.

2.0.5 Communication Facilitation. Communication utilizing the CNM projects database system is a requirement of Basic Services. The Design Professional shall, if needed, and within seven (7) days of award of this agreement, schedule training of project personnel on the use of the CNM project database. The Design Professional shall utilize the CNM project database for project management during development of the Contract Documents and for project administration during construction of the Project along with the Construction Manager at Risk, and the Owner. Each party shall:

1. Create all contractual communications through the CNM project software and load all Construction Documents;
2. Have access to the Internet and an Internet email address, of their own choice, and provide to CNM the names, positions, and email addresses of all individuals who will have access to the CNM software;
3. Have adequate computing hardware to run CNM software and;
4. Agree that use of this CNM software will not replace or change any contractual responsibilities.

2.0.6 Utilization Analysis. The Design Professional shall be required to provide room square footage and FICM codes for each space and provide an excel spread sheet showing the breakdown of net square footage and gross square footage. The Design Professional will also be required to provide a simplified floor plan to input in the CNM database for space utilization. The Design Professional will assist the project committee(s) assistance in filling out Higher Education Department forms for submittal to the Higher Education Department.
2.0.7 Project Budget. The Design Professional shall assist the project committee(s) in developing a budget anticipated for construction of the envisioned project that may include furniture, fixtures and equipment and other requirements to fully complete, occupy, operate and maintain the facility. During the course of the project, the Design Professional shall prepare an independent cost estimate based on the program for the work. Once approved by the Owner the Design Professional will be provided written notice to continue. A refined cost estimate shall be prepared at each phase and shall be reconciled to the satisfaction of CNM with cost estimates prepared by the Construction Manager at Risk. The Owner, in collaboration with the Design Professional and the Construction Manager at Risk, will establish an overall project budget for utilization by the Design Professional in the performance of services.

2.0.8 CMAR Contract: The Design Professional as a condition of Basic Services shall assist the CNM Purchasing department in the development of a CMAR agreement and note any specific requirements associated with this project.

2.0.9 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 once awarded a contract. 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 CMAR to ensure cost containment. Any changes to the IGMP prior to the setting of the GMP will require a GMP change request and if approved, an amendment to the contract through a revision to the CMAR’s purchase order.

2.0.10 Qualifications, Standard of Care and Coordination. The Design Professional affirms that its employees and consulting professionals shall possess the experience, knowledge and character necessary to qualify them individually for the services to be performed by them under this Agreement. All services shall be performed in accordance with the standards of their respective profession. The Design Professional affirms that there shall be adequate participation, coordination and cooperation by Design Professional and all consulting professionals in the development of the Construction Documents so that the components of the Project are coordinated:

1. to avoid conflicting design information within the Construction Documents that could cause unnecessary delay or expense during the Construction Phase, and to avoid Project design conflicts with the site, existing facilities, traffic and pedestrian routing and the general area of the Project; and,
2. so that the Project will function as intended.

2.0.11 Interdisciplinary Coordination Meetings. The Design Professional shall, as a process in the provision of services in accordance with the contract documents, hold Interdisciplinary Coordination Meetings and require attendance of appropriate consulting professionals at suitable times during the development of the Construction Documents and shall include as appropriate the Construction Manager at Risk in those meetings.

2.0.12 Energy Star: If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall provide the professional and engineering services necessary for its design and construction to meet the related basic criteria indicated in Part A, “OTHER CONDITIONS OR SERVICES.”

2.0.13 USGBC LEED Requirements: If Project is required to meet LEED Silver requirements, the Design Professional shall further develop original design strategies and methodologies including but not limited to all documentation, air quality tests and studies as required ensuring the building project is LEED Silver Certified or better as agreed to by the Owner. Registration and commissioning services are to be included in the project. Fundamental and enhanced commissioning design is considered to be part of Basic Services. The services of a commissioning
agent will be considered Reimbursable Services or contracted separately as well as registration, certification and any applicable fees. Administrative services such as modeling and documentation shall either be considered Reimbursable or Additional Services. The Design Professional may be required to assist the Owner in inputting Owner required data into the USGB system.

2.0.14 CISM Requirements: The Design Professional shall develop the design for the project to be in compliance with CNM’s Cable Infrastructure Standards Manual (CISM) and Cable plant standard specifications. The Design Professional shall work with CNM’s IT Department to review and understand the cable infrastructure. The Owner will provide the Design Professional a copy of the current manual.

2.0.15 Document Development for Construction Manager at Risk Procurement: It is the intent that this project be designed and constructed using the Construction Manager at Risk Delivery with Guaranteed Maximum Price delivery method. CNM will retain under separate agreement, a Construction Manager at Risk (CMAR) who will also serve as the General Contractor. For this project, the CMAR will be tasked to provide significant design input that will include: cost estimation, value engineering and contractor and subcontractor constructability assessments for the project. As part of the Basic Services, the Design Professional shall closely collaborate with the Construction Manager at Risk in the development of the project.

2.0.16 Verification of MACC. The Design Professional shall prepare for inclusion into the Request for Proposal for Construction Manager at Risk a complete Program Statement in accordance with contract documents intended to adequately define the scope of project Work and inclusive of an estimated MACC agreed upon by the Owner. The Construction Manager at Risk, as part of their proposal, shall submit a verification of the MACC based upon the Program Statement, and provide a Proposal Bond, valued at five (5) percent of the specified MACC that warrants that adequate design development information shall be provided to the Design Professional, that the MACC shall be maintained sufficient through Construction Document development and until the Guaranteed Maximum Price Amendment is executed. Should the Design Professional and the Construction Manager at Risk conclude, at any time, that the MACC and the Scope of the Work to be accomplished are incompatible; the Owner shall be notified immediately in writing with proposed recommendations to reconcile the incompatibility.

2.0.17 Construction Manager at Risk Selection: The Design Professional will provide the necessary drawings, specifications and other project information to define the project scope including but not limited to count, type and square feet of spaces to be included in the project, total square footage including tare of the facility, site features and improvements, infrastructure requirements and written general descriptions that will adequately describe the project to allow general and broad unit pricing.

The duties of the Design Professional in the Construction Manager at Risk Selection may include the following:

1. Prepare and present an overview of the project to interested Offerors at a pre-SOQ conference to be scheduled and coordinated with the Owner’s Purchasing Department. This will include consultation with Owner’s Purchasing Department during the preparation of the Request for Qualifications for Construction Manager at Risk services.
2. Provide staff, one of which must be a licensed Design Professional, to participate in the RFP and CMAR selection process. Designate one person to serve as a member of the Selection Committee for the Construction Manager at Risk procurement.
3. Review the Statements of Qualifications received in response to the Request for Qualifications. Meet with the Owner and the other members of the Selection Committee to determine the qualified Offerors to
whom a Request for Proposal will be sent for CMAR Fee and Specified General Conditions. Consult with the Owner during the preparation of the Request for Proposals.

4. Make recommendations for construction duration, phasing (if required), liquidated damages, a not-to-exceed amount for the CMAR Preconstruction Services Fee and an amount for GMP contingency.

5. Attend the Pre-Proposal Conference. Review and comment on the proposals for the CMAR Fee and Specified General Conditions received in response to the Request for Proposals.

6. If serving as a member of the Selection Committee, participate in discussions with the Owner and other members of the Selection Committee in determining the most qualified Offerors.

7. If serving as a committee member, participate in interviews of the most qualified Offerors and in discussions with the Owner and other members of the Selection Committee in determining the highest ranked Offeror.

8. Prepare an estimate for and participate with the Owner in negotiations of a fee for Preconstruction Services.

2.0.18 Guaranteed Maximum Price (GMP) Negotiations. At the Owner’s discretion, the Design Professional shall participate with the Owner in negotiating a Guaranteed Maximum Price for the Agreement between the Owner and the Construction Manager at Risk. The Owner and Design Professional that this process is a part of Basic Services. The Owner shall give due consideration to any Design Professional’s request for Additional Services and if it is mutually agreed, Additional Services will be authorized.

2.0.19 Maximum Allowable Construction Cost (MACC) Reconciliation. At each design phase following Program Statement, and periodically as deemed appropriate to maintain the MACC, the Design Professional shall provide to the Construction Manager at Risk, four (4) sets of Construction Documents at no cost to the Owner. 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 exceed 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 Design Development Phase shall be considered Basic Services and not an Additional Service unless Owner has directed a scope increase not identified to the Design Professional prior to the Programming Phase. Adjustments to the MACC and post Design Development Phase Additional Services shall be in accordance with the contract.

2.0.20 When the MACC is exceeded in any submittal prior to the negotiated guaranteed maximum price, the Owner may:

1. pending fund availability, give written approval through an amendment to the purchase order of an increase in the MACC; or,

2. cooperate with the Design Professional and the Construction Manager at Risk in revising the Project Scope to reduce the Probable Construction Cost at no cost to the owner; or,

3. terminate the Agreement in accordance with the contract documents.

2.0.21 Following the Programming Phase and the start of the Schematic Phase, the Owner shall require the Construction Manager at Risk to prepare Statements of Probable Construction Cost for each of the design phases. The Owner shall require the Construction Manager at Risk to include in the statements appropriate contingencies for design, bidding or negotiating, price escalation and market conditions. The Design Professional shall make
evaluations, representing the Design Professional's best judgment as a professional familiar with the construction industry, of the Owner's Project Budget, and the Construction Manager’s Statements of Probable Construction Cost, as well as detailed estimates of construction cost for safeguarding of the MACC and to guide the Design Professional in development of the Construction Documents. Notwithstanding the requirements of the contract documents, it is recognized, that the Design Professional does not have control over the cost of labor, materials, or equipment; over the Construction Manager’s methods of determining prices; competitive procurement, market, or negotiating conditions. The Design Professional will use the Construction Manager’s statements and estimates. Accordingly, the Design Professional cannot and does not warrant the accuracy of the estimates of the Construction Manager at Risk, or warrant or represent that bids of negotiated prices will not vary from the MACC, Guaranteed Maximum Price, Statement of Probable Construction Cost, or any evaluation prepared by the Construction Manager at Risk.

2.0.22 Coordination with Construction Manager at Risk. The Design Professional shall participate in regularly scheduled meetings with the Owner and the Construction Manager at Risk during preconstruction and work with the Construction Manager to endeavor to deliver to the Owner a successful project within the MACC. At a minimum, participation and coordination with the Construction Manager at Risk’s Work is required in the following areas: value engineering and assessing alternative construction options for cost reduction to achieve the Maximum Allowable Construction Cost; cost estimating; determining construction feasibility and constructability; site logistics; providing scope for subcontract bid packages; sequencing of work and scheduling. The Design Professional shall be responsible for addressing all reasonable issues and opportunities identified by the Construction Manager at Risk as directed by the Owner.

2.0.23 Subcontract Bidding. The Design Professional, if directed by the Owner, will work with the Construction Manager at Risk in the creation and facilitation of separate bid packages for phased construction. Additional Services not anticipated in the original scope of work may be authorized by the Owner upon written request by the Design Professional, to the extent additional work effort is beyond Basic Services and involves significant scope change.

2.0.24 Negotiation of the Guaranteed Maximum Price. When the Owner and Construction Manager at Risk mutually agree that the drawings and specifications are sufficiently complete for the Construction Manager at Risk to provide a Guaranteed Maximum Price (GMP) for the Work, the Design Professional shall provide four (4) sets of the drawings and specifications to the Construction Manager at Risk for its use in determining its Guaranteed Maximum Price at no cost to the Owner. The Design Professional shall participate with the Owner in negotiating a Guaranteed Maximum Price with the Construction Manager at Risk.

2.0.25 If during the development of the Construction Documents, estimates indicate that the Project exceeds the Guaranteed Maximum Price the provisions of the contract shall apply.

2.0.26 Roofing Consultant: The Design Professional shall responsibly cooperate and coordinate with the Owner provided contractor during all stages of the Project which involve roof consultation and/or observation services.

2.0.27 Other Consultants: The Design Professional shall responsibly cooperate and coordinate with any Owner provided consultants during any or all stages of the project.

2.0.28 Coordination with Other Owner’s Contractors. The Design Professional shall participate with other separate contractors, the Owner's own forces and the Owner in reviewing and coordinating their work when directed to do so.
The Design Professional shall make any revisions to the schedule deemed necessary after a joint review with the Owner. The Owner shall then give due consideration to the Design Professional’s request and if it is mutually agreed, Additional Services or an administrative fee tied to Reimbursable Services in which the consultant will be contracted under the Design Professional’s contract, may be authorized.

2.1 PROGRAMMING PHASE

2.1.1 The Owner shall schedule meetings between the Design Professional and the User Representative(s), including CNM committees, to review the roles and relationships among all parties.

2.1.2 A Project Program Statement with assistance of the project committee(s) shall be provided by the Design Professional in accordance with general Basic Services, and developed with the Design Professional’s knowledge and experience coupled with the Owner’s Specification, Programming Statement, the Master Plan and other information provided by the Owner and the User Representative to the Design Professional. The purpose of the Program Statement for this phase submission is to ensure that the Design Professional and Owner have a mutual understanding of the project’s goals and constraints including budget and to provide adequate definition of the project scope to allow the Construction Manager at Risk to verify the project’s MACC.

2.1.3 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. This may include the development of charettes to convey ideas and concepts of the project.

2.1.4 The Design Professional shall provide a complete project program that lists the needs of the Owner, project cost, objectives, conferences, regulatory requirements, schedule and Design Criteria.

2.1.5 The Design Professional shall provide preliminary evaluation of the Owner’s Program Statement and Project Schedule, Project site, available budget of the Work, and available surveys, tests, and reports to ascertain that each is consistent and comparable with the others and the requirements of the Project. If the Design Professional detects any inconsistencies or incompatibilities among the documents and information provided by the Owner, the Design Professional shall promptly recommend reasonable adjustments. Should the written program and preliminary budget exceed the Owner’s available budget, the Owner shall either:
   1. require the Design Professional to provide listed recommendations and adjustments that meet the available budget,
   2. provide the Design Professional with a written approval increasing the available budget, or
   3. terminate the agreement in accordance with the contract documents.

2.1.6 The Design Professional shall investigate existing conditions or existing facilities and list spaces that will be affected by the renovation or new construction.

2.1.7 The Design Professional shall investigate existing facilities and provide a preliminary seismic evaluation of the structures in accordance with New Mexico State Codes.

2.1.8 The Design Professional shall comply with CNM requirements for building communications cabling systems including voice, data and other low voltage communications cabling involving both fiber and copper media as required by CNM’s Information Technologies Services. All fiber lines, copper cabling, intrusion and fire alarm and conduit
shall be included in this project. The project will also include the establishment of modern telecommunication rooms to accommodate all low voltage cabling systems as noted in the CISM. The Design Professional shall obtain and list all design related permits and approvals required by governmental authorities having jurisdiction over the project (e.g. grading, drainage plans, zoning, right of ways, utility easements, encroachment).

2.1.9 The Design Professional shall meet with local governmental agencies to obtain prior approval.

2.1.10 The Design Professional shall obtain registration of the project with the U.S. Green Council to meet a minimum LEED Silver Certification. Selection of the commissioning agent will be selected at this part of the project. The Design Professional may be asked to assist in the selection of the commissioning agent by developing the scope requirements and seeking quotes.

2.1.11 The Design Professional will review the current mechanical systems to evaluate the current systems and recommend systems to lower energy cost.

2.1.12 The Design Professional shall provide cost study analyses on the amount of energy savings projected with the renovation of the project and provide the information to the project committee chair for inclusion in the Higher Education Department information.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 Upon receipt of a completed and signed program from the CNM committee(s) for the project, the Design Professional shall prepare the schematic design documents in accordance with the program document approved by CNM. The schematic design shall convey an initial indication of the design of the project, functional relationships of interior areas, the relationship of the project to the site, other buildings and the campus, the materials to be used in construction and the types of mechanical, electrical and structural systems to be utilized.

2.2.2 Schematic Drawings and Specifications. Based on the program, project schedule and delivery method, Project site, Budgeted Cost of the Work, and preparatory surveys, tests, and consultants’ reports, and any agreed adjustments thereto, the Design Professional shall prepare schematic drawings for Schematic Plan Submittal. The information shall include but not limited to:
   a. the merits of the design solution(s) as it applies to the Project Program;
   b. conceptual site considerations including geotechnical, location, utilities, and drainage including identification of off-site issues;
   c. approximate locations of programmed areas;
   d. refine dimensions, areas and volumes of programmed areas and tare;
   e. establish types of materials envisioned;
   f. the general planning and functional concepts of probable Design Professional, structural, mechanical and electrical systems;
   g. conceptual building plans including preliminary elevations, floor plans, renderings and sections.

2.2.3 Submit for Approval. The Design Professional shall submit the schematic design documents for the approval of the Owner and CNM committee(s) for the project. The schematic design document approved by the Owner shall constitute the Approved Project Schematic Design which can be revised only by written agreement of the Design Professional and Owner. The Design Professional shall prepare sufficient alternative approaches to design and construction to satisfy Owner’s requirements.
2.2.4 The Design Professional shall review alternative approaches to design and construction for the project and the Schematic Design Phase documents as they are being prepared at intervals appropriate for the progress of the project with the Owner and Contractor.

2.2.5 The Design Professional shall furnish the Contractor with copies of the Design Professional’s documents to assist the Contractor in fulfilling its responsibilities to the Owner. This copies will be included as part of Basic Services and not reimbursable.

2.2.6 The Design Professional shall provide the Owner and Contractor with a preliminary estimate of construction cost and shall review their estimate against the Contractor’s estimate for comparison; the Design Professional will work to reconcile any differences with the two estimates. The Design Professional will be required to provide a detailed explanation of the differences to the Owner. The Design Professional and Contractor shall meet as required to discuss the project and budget.

2.2.7 The Design Professional shall submit proposed Schematic Design Phase documents to the Construction Manager at Risk for probable cost and constructability review. Upon receipt of the documents, the Construction Manager at Risk’s shall provide an estimate in Level 1 UniFormat™, and in any other form and detail as the Construction Manager at Risk and Design Professional in consultation deem appropriate. The Design Professional will take action as required in accordance with the contract. If revisions to the Schematic Documents are required to comply with the MACC at the conclusion of the Schematic Phase, the Design Professional shall, as a Basic Service, incorporate the required revisions in the Construction Document Phase.

2.2.8 Physical prints and electronic copies shall be provided to CNM. The following minimums will be required: Three (3) print copies of the completed phase work and one (1) electronic copy of the above on CD. Provide a copy of the integrated 3D model and PDF of the sheet documents. Printing of these documents will be considered a Reimbursable Expense.

2.2.9 The Design Professional shall have a LEED kickoff meeting to discuss the project checklist with the consultants and the Owner to review possible points and any additional points that will ensure that the project meets at a minimum LEED Silver Certification for major renovation.

2.2.10 Prior to the Owner’s approval of the Schematic Design documents, the Design Professional shall incorporate such changes as are necessary to satisfy the Owner’s review comments.

2.2.11 The Design Professional shall submit to the Owner a statement of need and extent of civil engineering required for the project to protect new and existing facilities on or around the site from adverse conditions. Extensive civil engineering or civil engineering work outside of the immediate site proposed for the project may be either an Additional Service or a Reimbursable Expense. Any necessary surveys may be Owner provided.

2.2.12 The Design Professional shall submit to the Owner a statement of necessary geotechnical or soils engineering services that will be required. If the Design Professional does not believe the services of a Geotechnical Engineer are required for the project, a written notice of such shall be provided to the Owner stating same. Geotechnical engineering and any necessary surveys may be Owner provided, an Additional Service, or a Reimbursable Expense.
2.3 DESIGN DEVELOPMENT PHASE

2.3.1 From the approved Schematic Design drawings and documents, the Design Professional shall prepare the Design Development Documents and a written statement that identifies the need for any additional data, surveys, or tests.

2.3.2 Preliminary Drawings and Specifications. Based upon the Schematic Design documents approved by the Owner, and any adjustments authorized by the Owner in the budgeted cost of the Work, Program Schedule, or delivery method, the Design Professional shall prepare preliminary drawings, outline specifications, and other documents to fix and describe the size and character of the Project.

2.3.3 The Design Professional shall prepare and distribute conference memoranda, meeting notes, summaries of telephone conversations, documentation of site visits and inspection reports as required to maintain a comprehensive record of the Project within an agreed-to timeframe by both the Design Professional and the Owner. The Project name shall be shown on all documents.

2.3.4 Prepare exterior and interior electronic renderings of the design work in a format acceptable to the Owner, for the Owner’s use in explaining the design and/or advertising the project. The Design Professional shall also provide the Owner with a computer generated rendering of the facility renovations showing three dimensional views. The Design Professional shall obtain all design related permits and approvals required by governmental authorities having jurisdiction of the Project. The Design Professional shall also meet with the State Fire Marshall and shall provide him with a complete set of documents for inspection compliance.

2.3.5 The Design Professional shall work with the CMAR to determine any value engineering that will assist the project in meeting its schedule for construction, quality and at a minimum LEED Silver Certification. The Design Professional shall review its construction cost estimate in comparison to the construction cost prepared by the Contractor and shall reconcile any differences between the two construction cost estimates in coordination with the Contractor.

2.3.6 The Design Professional shall review the construction schedule with the CMAR and the Owner to review ways to keep some portions of the building operational during construction. The Design Professional may also be asked to develop a series of early work packages to meet the construction schedule. The review of the documents by the Owner shall not relieve the Design Professional of responsibility for code compliance, design deficiencies, omissions and errors and compliance with applicable laws.

2.3.7 The Design Professional shall review the Design Development Documents as they are being prepared at intervals appropriate to the progress of the project with the Owner and Contractor. The Design Professional shall furnish copies of the Design Professional’s documents to assist the Contractor in fulfilling its responsibilities to the Owner. At the completion of the Design Development Phase or such time as the Owner may specify to the Design Professional, Owner will furnish Design Professional with a Guaranteed Maximum Price proposal prepared by the CMAR based upon the Design Development Documents prepared by the Design Professional and approved by the Owner. The Design Professional shall assist the Owner and further advocate the Owner’s interest in Owner’s negotiations with the CMAR in an effort to develop a Guaranteed Maximum Price proposal acceptable to Owner. The Design Professional shall plan, draw and specify for the entire project so that the construction of the building and related facilities together with its built-in permanent fixtures and equipment will not cost more than the Guaranteed Maximum Price proposal from the Contractor.
2.3.8 If the CMAR’s Guaranteed Price Proposal exceeds the cost furnished to Owner by Design Professional, the Owner may direct the Design Professional to revise the documents at their own expense so the Guaranteed Maximum Price proposal for constructing the project shall not exceed the Owner’s Construction Cost and any previously approved construction cost estimate. The Design Professional shall as a Basic Service incorporate the required revisions in the Construction Document Phase.

2.3.9 After the Guaranteed Maximum Price has been accepted, the Design Professional shall incorporate into the Design Development any revisions which are necessary due to inaccurate assumptions and clarifications made in the development of the Guaranteed Maximum Price. Following corrections or revisions required by the Owner, the Design Professional shall acquire the approval, in writing, of the Owner, CNM committee(s) and User Representative(s) of all documents associated with the Design Development Phase before commencing work on the Design Development Phase.

2.3.10 The Design Professional shall further develop original design strategies and methodologies. Projected energy performance and Green strategies shall be adjusted and evaluated using the LEED building checklist. The Design Professional shall also submit updated report to Owner as part of the Design Development Documents submittal. The Design Professional shall deliver physical prints and electronic copies of documents shall be provided. No less than the following shall be provided: three (3) copies of completed work, one (1) electronic copy of the completed work on CD and provide a copy of the integrated 3D BIM model and PDF of sheet documents. This work shall be considered Reimbursable Expenses.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 The Design Professional shall prepare the Construction Documents based upon information contained in the Design Development Drawings and other documents previously approved by the Owner and setting forth in detail the requirements for the construction of the entire Project.

2.4.2 Construction Documents shall include written and graphic elements indicating contracting requirements, specifications and contract drawings. If Construction Manager at Risk is to provide professional design services, layouts of equipment or certifications related to systems, materials or equipment that are not included in the Construction Documents, the Design Professional shall clearly define and identify such services and specify all performance and design criteria that such services must satisfy within the Construction Documents. The Owner or the Construction Manager at Risk shall not be responsible for the adequacy of the performance or design criteria specified by the Design Professional and required by the Construction Documents. The Design Professional will be responsible for managing the design to stay within the Guaranteed Maximum Price proposal. 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 Construction Manager.

2.4.3 Construction Documents are expected to include coordinated information as necessary to describe the anticipated performance, such as, but not limited to:
1. site grading, emergency access, utility locations and the like;
2. all building components and systems;
3. layout, locating or dimensioning of equipment, components, devices, diffusers and the like;
4. schematics, definitions and capacities of controls, operating logic, sequencing, piping, circuitry, ducting and the like;
5. details, schedules and specifications of all of the above; and,
6. roof slopes, flashings, dissimilar material transitions and the like.

2.4.4 Layout, location and type of alarm system devices and panels; fire prevention system riser and heads; HVAC controls, logic and sequencing; and similar items or systems shall be defined by the Construction Documents and shall not be defined entirely by performance requirements.

2.4.5 Construction Documents shall include the Project Manual containing the project specifications and shall also include at a minimum bid forms, wage determination (if required), General Conditions of the Contract for Construction, Project Requirements and the Owner and Construction Manager at Risk Agreement. The Project Manual shall also include as a part of Division 01, and in accordance with the contract documents, a Required Submittals List, indexed by MasterFormat™ divisions identical to indexing of items (or categories of items) of work within the specifications for which shop drawings or other submittals will be required. The Required Submittals List shall indicate the submittal items that must be submitted together as a package for the Design Professional’s efficient review of like or interrelated items to be compared or correlated one to another. The Design Professional shall, as part of Basic Services, review Division 1 and provide information and changes to meet the intent of the project.

2.4.6 In preparing the Construction Documents, the Design Professional shall, if directed by Owner in accordance with the agreement and in consultation with the Construction Manager at Risk, prepare bid packages such that phased bidding is possible. The Design Professional shall prepare the necessary plans and specifications as applicable and ensure that the various divisions of the Construction Documents are consistent with one another.

2.4.7 Upon completion of the Construction Documents, the Design Professional shall brief the Owner, the Construction Manager at Risk and User Representative(s) on the Bidding Documents, specifically addressing previous Owner concerns and requirements, as well as any bid package requirements requested by the Construction Manager at Risk. The Construction Manager at Risk shall, in consultation with the Design Professional, furnish to the Owner a Level 3 UniFormat™ probable cost estimate, and any other relevant estimate forms that are appropriate. The Design Professional shall furnish to the Owner, in consultation with the CMAR, an itemized budget. Should the Design Professional at any time conclude that the budget and the Scope of the Work to be accomplished are incompatible, the Owner shall be notified immediately and shall take action as required in accordance with the contract documents. The Design Professional shall, prior to making any required revisions, obtain written approval of the Owner and User Representative(s) of any proposed changes prior to proceeding with revisions to the in-progress Construction Documents.

2.4.8 The Design Professional shall be responsible for the technical completeness and code compliance of the project design.

2.4.9 Bid alternates shall be developed as an integral part of the Construction Documents from the start of the Construction Documents Phase. Bid alternates shall be clearly delineated in the documents and shall be appropriately detailed to describe the nature of the complete project if the bid alternate is or is not exercised.

2.4.10 The Design Professional shall submit Construction Documents for required plan review and shall revise documents as necessary to resolve plan check comments and secure approvals from authorities having jurisdiction over the project.

2.4.11 Under separate agreement with CNM, the Contractor is required to perform a document acceptance review of the 100% plan checked Construction Documents. The Design Professional shall be responsive to Contractor
questions and provide revisions to the Construction Documents to address at this point the identified final pre-bid deficiencies, if any. The Design Professional shall resubmit the Construction Documents as necessary if the adjustments resulted in a change affecting the previous document approvals described in the Contract Documents.

2.4.12 Physical Deliverables: Physical prints and electronic copies of the documents shall be: Three (3) print copies of the completed phase work, one (1) electronic copy of the completed phase work on CD, and a file copy of the integrated 3D BIM model and PDF of sheet documents, two (2) construction documents sets stamped and signed by the Design Professional and prominently marked for bid containing all the required approvals stampings by authorities having jurisdiction. This portion of the contract will be Reimbursable Expenses.

2.5 BIDDING PHASE

2.5.1 In conjunction with the development of the Guaranteed Maximum Price and at other times as appropriate to the project, the Design Professional shall assist the CMAR to the extent needed with the bidding process. This may include receiving and recording requests for bid and request for proposals documents, interpret bids, evaluate proposed alternate-equals and accounting for RFP documents issued; receiving and resolving questions about the RFP; preparing addenda for the CMAR to issue addenda, and accounting addenda issued attending pre-bid and pre-proposal conferences and meetings; assisting in preparing and awarding multiple contracts for construction. A copy of all information regarding the bidding process and documents shall be provided to CNM’s Purchasing Department.

2.5.2 Project Wage Rate Determination: The Design Professional shall prepare a request to the New Mexico Department of Workforce Solutions for a minimum wage rate determination for the Project pursuant to Section 13-4-11, NMSA 1978, and following the Owner’s approval, shall make the request. The Design Professional shall provide the Division a description of the Project, an estimate of construction cost, an approximate bid opening date, and any other pertinent information required by the New Mexico Department of Workforce Solutions. The Design Professional shall include the wage rate determination in the Bidding Documents and provide a copy to the CNM Purchasing Department.

2.6 CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Construction Phase will commence with the execution of the Amendment to the Construction Manager at Risk Contract establishing the GMP and shall continue through Certification of Final Completion. In addition, the Design Professional Project Representative shall conduct an inspection of the Work with the Owner eleven (11) months following Substantial Completion for the purpose of generating list of items needing correction by the Construction Manager at Risk.

2.6.2 The Design Professional Project Representative will provide administration of the Contract as described in the Construction Documents, and will be a representative of the Owner:
1. during construction;
2. until final payment is due; and,
3. from time-to-time during the one year period for correction of Work as described in the contract documents.

2.6.3 Jobsite Safety. Should the Design Professional or representative thereof, observe any condition, while on site, believed possibly to be unsafe, the Design Professional will immediately notify the Construction Manager at Risk’s Superintendent and the Owner’s Representative and shall document the event in writing to the Owner and the Construction Manager at Risk. The Design Professional does not have stop-work authority and the Design
Professional shall not be liable for such action made in good faith. A decision to stop the work due to a potentially unsafe situation will reside totally with the Construction Manager at Risk. This paragraph shall not be deemed to create a duty on the part of the Design Professional or the Owner to monitor, or be responsible in any way for jobsite safety.

2.6.4 The Design Professional shall perform Construction Contract Administration consistent with the General Conditions of the Contract and in accordance with CNM procurement procedures.

2.6.5 The Design Professional shall assist the Owner in making arrangements for the Preconstruction (kickoff) Conference and shall assist in the Preconstruction Conference and shall distribute copies to all parties including but not limited to CNM’s Facilities and Purchasing Departments.

2.6.6 The Design Professional shall provide engineering certification as required by the New Mexico State CID.

2.6.7 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, and (c) 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 of 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.

2.6.8 Instructions to the Construction Manager at Risk shall be communicated through the Design Professional.

2.6.9 Weekly, the Construction Manager at Risk shall host a job site progress meeting in accordance with contract documents. Meetings shall be open forum chaired by the Construction Manager at Risk and shall include any Subcontractors doing work or anticipating work in the near future, Owner Representatives, CNM ITS Representatives, any entities the Owner would like to attend, including User Representative, Design Professional Project Representative and any Consultant(s) to the Design Professional as appropriate. The Construction Manager at Risk shall alert the Design Professional Project Representative as to which Consultants are requested to attend the next meeting and include that request in the meeting minutes. Phone or web conferencing may be used if effective in the opinion of the Owner.

2.6.10 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 a written explanation or directions and/or supplementary details or drawings, whichever is required to complete, explain or make definite any of the provisions of the Drawings and Specifications and give them due effect.

2.6.11 The Design Professional shall respond to questions about the Contract Documents in a timely manner consistent with the terms of the Contract Documents.

2.6.12 Decisions by the Design Professional, including interpretations and clarifications of the Drawings, Specifications, or other Contract Documents, and directions, or decisions regarding performance of the work, shall be in writing and shall be advisory to the Construction Manager at Risk and Owner.
2.6.13 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 meetings, and inspection reports issued or received by the Design Professional. The Owner shall have access to the Project Record during the Design Professional’s 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.

2.6.14 Communications: In order 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 a 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.

2.6.15 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. 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 equipment 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.

2.6.16 The Design Professional shall within fourteen (14) days, or otherwise as agreed upon with the Construction Manager at Risk, review and return to the Construction Manager at Risk the Construction Manager at Risk's submittals, such as shop drawings, product data, and samples, but only for conformance with the design concept of the Work and with the information given in the Construction Documents; and, for each submittal, the Design Professional shall designate in writing that the Design Professional:

1. takes no exception; or,
2. rejects and requires the Construction Manager at Risk to re-submit as specified; or,
3. requires corrections or revisions as noted and then re-submit; or,
4. approves as corrected; or,
5. is returning with no action to be included within submittal package required by the Construction Documents.

2.6.17 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.

2.6.18 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.

2.6.19 Within thirty (30) days after Substantial Completion of the Work by the Contractor, the Design Professional will furnish the Owner one (1) complete set of the Contractor’s approved submittals, organized in a logical manner.
2.6.20 The Design Professional Project Representative shall render written decisions in accordance with the General Conditions on all claims, disputes, and other matters in question between the Owner and the Construction Manager at Risk relating to the execution or progress of the Work or the interpretation of the Construction Documents in accordance with the General Conditions. If no resolution can be reached, the Design Professional will send the information to the Director of Purchasing to render Owner’s decision.

2.6.21 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.

2.6.22 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 apprised of the Contractor’s progress.

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

2.6.24 Definition of Inspections: The Design Professional’s “inspection” means the service performed by the Design Professional through which the Design Professional:
   1. Becomes generally familiar with the in-progress and completed Work and the quality of the Work,
   2. Determines whether the Work is progressing in general accordance with the Contractor’s schedule and is likely to be complete within the Contract Time,
   3. 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,
   4. Endeavors 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,
   5. Reviews and addresses with the Contractor any problems in implementing the requirements of the Contract Documents and the Contractor may have encountered, and
   6. Keeps the Owner fully informed about the Project.

2.6.25 Coordination with the Owner: When scheduling Scheduled Inspections and Conferences, the Design Professional shall first contact the Project Manager by telephone, establish with the Director a mutually acceptable time for the inspection or conference and confirm the agreed date and time in writing at least seven (7) days prior to the date of the inspection or conference.

2.6.26 Frequency: The Design Professional’s periodic Inspections 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 one inspection per week while construction is ongoing. The performance of this 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.
2.6.27 Inspection by Registered Professional: Inspections may be performed by a representative of the Design Professional to whom the Owner has no objection; however, the Design Professional or a member of the Design Professional’s staff who is a New Mexico Registered Professional shall perform an average of at least three periodic inspections per month during construction. This requirement may be waived during periods in which weather or other construction delay progress, or during slow phases of the construction making inspections during such period unwarranted.

2.6.28 Reporting: The Design Professional shall promptly prepare a complete report of each inspection by the Design Professional, Design Professional’s representative, or consulting engineer and promptly furnish a copy of each report to the Owner and Contractor. The Design Professional shall prepare and distribute an inspection report weekly during construction. For weeks during which inspections are unwarranted, the Design Professional shall state in the report that no inspection was performed and why.

2.6.29 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.

2.6.30 USGBC LEED Certification: If Project is required by Part A of this Agreement to qualify for, at a minimum, LEED Silver Certification, then the Design Professional shall: by Substantial Completion of the Project, obtain the USGBC Certification for LEED Silver Certification or higher and provide the Owner a summary of the LEED features that helped obtain the certification for publication.

2.6.31 Modifications or Changes to the Work: Modification or Changes to the Work may be requested by any party through a Modification/Change Request (MCR) as noted in the Construction Manager at Risk contract. No Work that could reasonably be expected to alter the contract price or time or materially alter the Project outcome shall be undertaken until the Owner has authorized a MCR to proceed. The Owner reserves the right to seek reasonable remedy from the Design Professional for Modification or Changes to the Work or portions of Work made necessary due to the Design Professional's errors and omissions.
   1. Minor Changes in Work. 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/or performance of the finished work. Changes that involve an increase to the contract cost shall only be authorized by the Owner.
   2. 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.
   3. Contract Change Orders. The Design Professional shall administer the Change Order Procedures provided in the Contract.
   4. Using the Change Order 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. Review and approval of the Change Order shall be subject to the review and approval by the Owner’s representatives.
   5. 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.
   6. The Extensive preparation of details, supplemental drawings, specifications, or other documents to describe a change in the work shall be included in the Design Professional’s Basic Fee.
2.6.32 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 Payments in accordance with the Contract. The Design Professional will have three (3) days in which to accept or reject the Pay Application. If approved, the Design Professional must deliver the Pay Application for Payment and Certification for Payment and all supporting documentation to the CNM Business Office within three (3) calendar days. If the Design Professional rejects the Pay Application for any reason, notification must be sent within those three (3) days to the CMAR and Owner stating the reason(s) for rejection.

1. The Design Professional shall within three (3) days after receipt of the Construction Manager at Risk's Application for Payment; either notify the Construction Manager at Risk of errors in the Application or, make recommendations to the Owner for payment of the amounts owing to the Construction Manager at Risk in the form of a Certificate for Payment that shall be subject to the Owner's approval. The Application for Payment shall be based on observations at the site, evaluations of the Construction Manager at Risk's Applications for Payment, Construction Manager at Risk’s Schedule, consultation with the Owner and any other knowledge or information the Design Professional may have. The issuance of a Certificate for Payment shall not be a representation that the Design Professional has made any examination to ascertain how and for what purpose the Construction Manager at Risk has used the money paid on account of the Contract Sum. An application for payment must be reviewed within three (3) days and either:

   a) Denied and returned to the CMAR within three (3) calendar days from receiving the pay application with a written explanation describing the reason for denial and copied to CNM’s Facilities Department, or
   b) Approved and delivered to CNM’s Business Office within three (3) calendar days of receipt from the CMAR. The Design Professional will send the Application for Payment to CNM at the following address:

      CNM
      Attn: Business Office
      P. O Box 4586
      Albuquerque, NM 87196-4586

2. The Design Professional Project Representative shall either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager at Risk, for such amount as the Design Professional Project Representative determines is properly due, or notify the Construction Manager at Risk and Owner in writing of the Design Professional Project Representative's reasons for withholding certification in whole or in part as provided in of the General Conditions of the Contract for Construction.

3. The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional Project Representative's evaluation of the Work and the data comprising the Application for Payment, that to the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Construction Documents subject to:

   a) subsequent evaluation of the Work upon Substantial Completion;
   b) subsequent evaluation of the Work upon Final Completion; the results of any tests required by the Construction Documents or the Design Professional;
   c) minor deviations from the Construction Documents correctable prior to completion; and,
d) any specific qualifications stated in the Certificate for Payment.

4. 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 question, the Design Professional will notify the Contractor and the Owner and act in accordance with the Contract Documents.

5. Should the Owner notice an error on the Certificate of Payment, the Owner shall immediately notify the Design Professional and the Design Professional shall immediately notify the Contractor of the error for resubmission.

2.6.33 The Design Professional shall ensure that the Construction Manager at Risk’s As-Built drawings have been reviewed by the Design Professional Project Representative and by the Design Professional’s Consultants and found, to the best of the Design Professional's knowledge, information and belief, to accurately depict completed Work inclusive of, but not be limited to, actual locations and installed types, brand, model number and similar of all Work including ducts, pipes, conduit, equipment, walls and site utilities; and, payment certified is in accordance with the conditions of the contract and other parts of the General Conditions.

2.6.34 Prior to the issuance of the Certificate for Payment that fully pays out the Schedule of Value line item for Close-Out, the Design Professional shall ensure that all requirements of Close-Out as defined in the General Conditions of the Contract for Construction have been delivered including completion of Record Drawings by Design Professional within thirty (30) days of Design Professional’s receipt and acceptance of As-Builts from the Construction Manager at Risk.

   1. Prior to final payment, the Design Professional shall prepare and deliver to the Owner all Record Drawings and Final Report to the Owner.
   2. The Design Professional shall provide a hard copy and electronic copy of the plans to the Owner.

2.6.35 Substantial Completion Inspection and Recommendation. Upon request by the Construction Manager at Risk and within ten (10) days of receipt of Construction Manager at Risk’s Punch List and request for Substantial Completion, the Design Professional Project Representative shall conduct project inspections to determine the Dates of Substantial Completion and upon approval by the Owner, the Design Professional Project Representative shall issue Certificate of Substantial Completion and upon acceptance by all parties, issue a Certificate for Payment appropriate to the Work complete.

2.6.36 Close-Out. The Construction Manager at Risk shall complete all of the requirements of close-out in accordance with the contract documents and submit written notice to the Design Professional requesting the Close-Out Meeting. The Design Professional shall schedule the Close-Out Meeting within ten (10) days of the request or otherwise reply in writing to the Construction Manager at Risk why the request is premature. At the Close-Out Meeting all requirements to achieve close-out will be verified and if Work is found to be complete, the Design Professional, with concurrence from the Owner, shall provide written approval of Construction Manager at Risk's completion of close-out requirements within five (5) days of the conclusion of the meeting.

2.6.37 Final Completion. Following successful close-out and upon receipt of a written notice from the Construction Manager at Risk that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Design Professional will promptly make such inspection. When the Design Professional finds the Work
acceptable under the Contract Documents and the Construction Contract have been fully performed, the Design Professional will promptly, with the Owner's prior approval, issue a Certificate of Final Completion and upon acceptance by all parties, issue a final Certificate for Payment bearing the date of Final Completion, and stating that to the best of the Design Professional's knowledge, information and belief and on the basis of the Design Professional's or Design Professional's Project Representative's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Construction Contract Documents.

2.6.38 The Construction Contract Administration Phase shall terminate upon expiration of the Warranty period or settlement of all Warranty claims, whichever occurs last.

2.7 RECORD DOCUMENT PHASE

2.7.1 At the conclusion of the Construction Administration Phase, the Design Professional shall obtain the completed As-Built Drawings from the Contractor in accordance with the General Conditions of the Contract. The Design Professional shall obtain, review, approve or take other action on Construction Manager at Risk submitted punch lists, operation and maintenance manuals, warranties and related documents required by the Construction Documents. The Design Professional shall be responsible for appending markings and attachments from the contractor’s As-Built Drawings, including delineation of RFI responses and Change Order drawings into a Record Document set based upon the Project’s Construction Documents. Hand drafted annotations and photocopied annotations of the RFI responses are unacceptable as a final product. The document files and individual document sheets shall be prominently labeled RECORD DRAWING DOCUMENTS and dated.

2.7.2 The Design Professional shall submit a draft print set of Record Documents for CNM review. Upon acceptance of the documents by CNM, the Design Professional shall at a minimum furnish CNM with the following: One (1) print copy of the completed Record Documents, One (1) Electronic file both Dwg and PDF copy on CD of integrated 3D BIM model, PDF of the design documents and PDF of text documents and any required CD’s or other electronic media to transmit Record documents.

2.8 POST CONSTRUCTION PHASE

2.8.1 The Design Professional Project Representative shall, eleven (11) months after Substantial Completion, schedule a meeting with the Owner, User Representative, Design Professional Project Representative, and Design Professional’s Consultants to evaluate the building and its operations; inspect Design Professional systems; and make all reasonable efforts to discover defects in materials, equipment, and workmanship. Based on the eleven (11) month walkthrough, the Design Professional Project Representative shall generate a list of Work requiring correction.

ARTICLE 3
USER REPRESENTATIVE

3.1 The Owner shall designate a primary User Representative from a project committee that shall represent all other User Representatives and shall serve as primary contact for the project.

3.2 The User Representative(s) and the Owner shall provide the Design Professional with information required under the Design Phases as well as additional information required by the Design Professional for the purpose of defining the Scope of the Project and to assist the Design Professional and the Owner in the development and completion of the Project.
3.3 The User Representative(s) shall meet as needed with the Design Professional and shall respond to all written inquiries submitted by the Design Professional within any time limits set forth in the inquiry.

3.4 Information submitted directly by the User Representative(s) to the Design Professional is subject to subsequent approval by the Owner and Executive Committee.

ARTICLE 4
OWNER'S RESPONSIBILITIES

4.1 The Owner shall designate in writing an Owner’s Representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as provided in the Contract Documents, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's Authorized Representative.

4.2 The Owner and the User Representative(s) shall provide information to the Design Professional as requested regarding the User's requirements in the development of Project Program Documents.

4.3 The Owner shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other improvements including landscaping, full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths; and, to furnish soil tests, test borings, material tests, environmental management plan and other special data as may be mutually agreed by the Owner and Design Professional, to the best of the Owner’s capabilities.

4.4 The Owner shall examine documents submitted by the Design Professional and shall render decisions promptly to avoid unreasonable delay in the progress of the Design Professional's services. Should any decision made by the Owner create a delay that would impact time or budget, the Design Professional shall notify the Owner in writing and submit a copy to Owner’s Purchasing Department at the following address:

    Central New Mexico Community College Purchasing Department
    525 Buena Vista SE, Bldg “A”, Room A109
    Albuquerque, NM 87106
    Attention: Greg Van Wart, Senior Buyer
    cc: Wanda Helms, Director for Purchasing and Materials Management

4.5 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents, prompt written notice thereof shall be given by the Owner to the Design Professional.

4.6 The Owner shall perform the following functions for the CMAR procurement:

    1) Schedule and provide facilities for a Pre-Proposal Conference.
    2) Appoint the Selection Committee.
    3) Receive Statements of Qualifications from firms interested in providing CMAR services and distribute copies to the Selection Committee for review.
    4) Receive Proposals.
5) Schedule and provide facilities for a Pre-Interview Conference (as needed).
6) Schedule and provide facilities for interviews of the most qualified Offerors.
7) Tabulate the result of the Selection Committee’s review of the Statements of Qualifications, Proposals, and Interviews.
8) Lead the negotiations for a fee for Pre-construction Services.
9) Notify and request approval of award the governing body of the Selection Committee’s recommendation.
10) Prepare and Issue the award of the RFP for the CMAR.
11) Issue a Notice to Proceed to the CMAR for Pre-construction services.
12) Issue Early Work Amendments with the CMAR.
13) Issue the Guaranteed Maximum Price Amendment through a revision to the purchase order.
14) Issue all MCRs and obtain approval as required by the Contract Documents.
15) Issue all Change Orders.
16) Issue all Contract Documents in addition to those listed above.

ARTICLE 5
REIMBURSABLE EXPENSES

5.0.1 Reimbursable Expenses are limited by this Agreement and are those expenses above and beyond Basic Services compensation and are the actual expenditures made by the Design Professional in the interest of the project with third parties. Reimbursable Expenses shall be limited to expenses for:

1. surveying, hazardous material testing or abatement, geotechnical testing, extensive civil engineering or any other project related expenses not included in Basic Services, and that received advance written authorization by the Owner;
2. fees paid for securing approvals of authorities having jurisdiction over the Project;
3. reproduction costs for Owner reviews, Construction Manager at Risk services including subcontract bidding, provided there is written Owner prior approval of estimated costs and reproduction costs during the Construction Phase, provided there is written Owner prior approval of estimated costs. All other reproduction costs as may be required for office use of the Design Professional and the Design Professional's Consultants shall be a part of the Design Professional's Basic Compensation.
4. The Design Professional may charge Bidders a deposit fee (made payable to CNM) authorized by the Owner that approximates the full cost of reproduction of drawings, specifications, and other documents required by the Construction Manager at Risk to solicit bids from subcontractors and material suppliers. This fee shall be completely refunded, if the documents are returned in usable condition within the time limits specified in the Invitation to Bid. All forfeited fees shall be given to the Owner.
5. reasonable plan checks/ review fees charged by appropriate governmental authority(s);
6. 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.
7. land surveys for property boundaries, topographical data, legal description, etc.
8. special inspections or testing.
9. specialized consulting including but not limited to the labs requiring specialized consultants unless otherwise agreed to under Basic or Additional Services.
10. LEED modeling or administration that is not part of the LEED design unless agreed to under Additional Services.
11. On site “as-builts” that include field measurements are part of Basic Services.
12. Other similar services through third parties.

5.0.2 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. The Design Professional may receive an administrative fee of up to 10% not including tax of the reimbursable work that is performed under their contract. All requests for reimbursement of expenses shall be accompanied by copies of original invoices.

5.0.3 CNM may require Design Professional to obtain three (3) quotes for work estimated to exceed $20,000.00. Work estimated at a cost not to exceed $20,000.00 may be issued through the Facilities Department on amendment for Reimbursable Expenses which also serves as a Notice to Proceed. Work estimated to exceed $20,000.00 will require the authorization of the Owner’s Purchasing Department and other CNM signatories as required and indicated on the agreement for Reimbursable Expenses.

ARTICLE 6
ADDITIONAL SERVICES

6.1 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 Additional 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 costs to perform the services and accomplish the work. The rates for the work shall be based upon the hourly rate schedule provided by Design Professional and incorporated into the Contract Documents. CNM’s approval of such proposal shall be in writing and communicated through the issuance of an amendment for Additional Services. Work estimated at a cost not-to-exceed $20,000.00 may be issued as amendment for Additional Design Services through the Facilities Department. Work estimated to exceed $20,000.00 will require the authorization of the Owner’s Purchasing Department and other CNM signatories as required and indicated on the agreement for Additional Services. No payment for Additional Services and no reimbursement for Reimbursable Services in connection with such services shall be made except for such Services performed in accordance with CNM’s agreement for Additional Services.

6.2 Additional Services may include but not be limited to the following beyond those included in basic services: On-site construction administration services; civil engineering and landscaping, additional programming, as-builts or other similar services related to major discrepancies found between the drawings provided and review of the site, specialize engineer or consulting services; master drainage, plan traffic impact study other similar services. The Design Professional may be required to provide interior design services associated with the design specifications, selection, and installation of the fixtures, furniture, and equipment for the Project which may or may not be included in the MACC of the project. These services shall be considered 1 of 5 ways:

1. Additional Services if performed by the Design Professional staff and not originally included in the MACC,
2. Reimbursable Services,
3. contracted separately and directly with CNM,
4. a combination of the above in which fees will be negotiated.

ARTICLE 7
PAYMENT TO THE DESIGN PROFESSIONAL
7.1 PAYMENTS FOR BASIC SERVICES AND SERVICES ASSOCIATED WITH CHANGE ORDERS

7.1.1 Payment for Basic Services shall be in proportion to services performed within each phase of services as provided by the contract documents and per Part A of the Agreement between the Owner and the Design Professional.

7.1.2 When portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, based on the:
   1. lowest bona fide bid or negotiated proposal; or
   2. most recent Statement of Probable Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

7.2 Payments for Services and Costs

7.2.1 The Design Professional shall submit monthly, a fully completed request for payment for all completed services and costs on the form provided by and agreed to by both parties under the Contract Documents. Request for Payment shall be submitted to the Owner for approval on or about the 25th of the month for which payment is requested. The Owner shall within seven (7) days of receipt of a properly executed Request for Payment, approve or notify the Design Professional in writing of specific reasoning for any disputed and unapproved amounts. The Design Professional shall ensure that the approved Request for Payment is delivered to the CNM Business Office prior to the 8th of the month "cut-off" who shall then process approved amounts within thirty (30) days of that time, with faster payment notwithstanding, and make payment of undisputed amounts to the Design Professional. Requests for payment received after the 8th of the month "cut-off" will be processed along with the following month’s applications.

7.2.2 The Design Professional shall submit at completion of each phase of the project and, at the completion of the Project, certification or letters that payment has been made to all consultants, suppliers and others for materials and services required by this Agreement.

7.3 Payments Withheld. No deductions or withholdings shall be made from the Design Professional's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Construction Manager at Risks, or on account of the cost of modification to the Work other than those for which the Design Professional may be liable in accordance with this Agreement.

7.4 Tax. The Design Professional shall use the tax rate for the location in which the services are rendered.

7.5 Project Suspension or Termination – Other Parties. In the event of termination or suspension of the Project due to the fault of parties other than the Design Professional, the Design Professional shall be compensated for services performed to termination or suspension date in accordance with Article 10.

7.6 Liquidated damages. The Design professional may be charged liquidated damages by failure on the part of the Design Professional to provide deliverables in a timely manner which would result in delays to the project. Design Professional and the Owner's Purchasing Department will negotiate each phase of the project and associated liquidated damages. The Design Professional is required to contact the Owner immediately of any potential delays. If an extension of time is warranted, putting the design professional not at fault, then an amendment will be issued to their contract adjusting their delivery schedule. Liquidated damages for this contract will be in the amount of $______ (to be negotiated between the Design Professional and the Owner) per day past the agreed to schedule deadlines for the project.
7.7 Payment associated with Change Orders. The Design Professional is obligated under the Basic Services section to prepare details of and to administer Change Orders. If the proposed change is initiated by the Owner or results from field conditions, the Design Professional shall be compensated for its effort in preparing, designing, and administering Change Orders at the rate of _____% (a percentage equal to negotiated rate for Basic Services) of the actual construction cost of the Change Order. If the proposed change results from the Design Professional’s oversight, the Design Professional’s services working on the Change Order shall constitute part of the Basic Services at Design Professional’s own expense.

ARTICLE 8
DESIGN PROFESSIONAL’S RECORDS AND AUDIT

8.0 The 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 the Design Professional involving transactions related to this Agreement for a period of three (3) years after final payment.

ARTICLE 9
OWNERSHIP AND USE OF DOCUMENTS

9.0 Original construction document drawings, designs, specifications, notes, project manuals, and related documents of Work developed in the performance of this Agreement by the Design Professional shall become the sole property of the Owner whether the Project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. These documents shall be kept on file by the Owner unless, by written request, the Owner elects that the Design Professional maintain the originals. The Design Professional shall, regardless of location of originals, maintain a complete digital set of any and all Record Documents developed under this Agreement. Prior to Bid, the Design Professional shall provide to the Owner a digital set of the Bid Documents.

9.1 All documents, including drawings and specifications prepared by the Design Professional pursuant to this Agreement are not intended or represented to be suitable for reuse by the Owner on any other project. The Design Professional shall not be liable should the Owner use the documents, in whole or in part, in the future when the Design Professional’s services are not retained.

9.2 The original drawings may be marked by the Owner or the Design Professional to designate the restrictions of use of these documents as set forth in the Contract Documents.

9.3 Copyright. The Owner will retain all common law, statutory and other reserved rights, in addition to the copyrights. No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Design Professional.

ARTICLE 10
TERMINATION OF AGREEMENT
10.0 Termination for Cause. If the 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. The Design Professional shall take corrective measures within such time. The 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.

10.1 In the event of a for-cause termination, CNM’s Purchasing Department shall terminate this Agreement by delivering to the 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.

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

10.3 In the event of a termination for convenience, CNM shall terminate this Agreement by its Purchasing Department delivering to the 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, the 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 11
GENERAL AND SPECIAL PROVISIONS

11.1 Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by CNM and any other governmental body or committee required 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 Design Professional. CNM’s decision as to whether sufficient appropriations are available shall be accepted by the Design Professional and shall be final.
11.2 Release. The 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. The 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.

11.3 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.

11.4 Liability and Claims.

11.4.1 As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of the Owner's approval of the Final Certificate of Payment.

11.4.2 The Owner and the Design Professional waive all rights against each other and against the Construction Manager at Risk, consultants, agents, and employees of the other for damages covered and paid by any property insurance during construction as set forth in the Conditions of the Contract for Construction, as provided as a part of this Agreement. The Owner and the Design Professional each shall require appropriate similar waivers from their Construction Manager at Risk, consultants, and agents.

11.4.3 As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of its employees or agents. The liability of the Owner and the State of New Mexico shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-41-1 et seq., NMSA 1978, as amended.

11.5 Mediation.

11.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

11.5.2 The parties shall make best efforts to resolve claims, disputes or other matters in question by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

11.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Settlement Agreements reached in
mediation and signed by all parties involved in the dispute; shall be enforceable in any court having jurisdiction thereof.

11.6 Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by Registered or Certified Mail, Federal Express, or similar service with proof of delivery to the last business address known to the party giving notice. The address to which notices shall be mailed are as provided on the first page of this Agreement and either party’s address may be changed by written notice given by such party to the other as herein above provided.

11.7 Conflict of Interest. The Design Professional affirms that he currently 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. The Design Professional further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Design Professional. The Design Professional also agrees that, unless Owner provides prior written approval, neither the Design Professional nor any employee of same shall have an interest, direct nor indirect, in any company hired for the Project as Construction Manager at Risk, any tier Subcontractors, or supplier, except when the Project is a design-build project.

11.8 Confidentiality Agreement. The Design Professional shall be required to sign a Confidentiality Agreement, Attachment referenced per the RFP# P-360, in order to be considered for award.

11.9 Bribes. Pursuant to Section 13-1-191, NMSA 1978, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-24-1, 30-24-2, and 30-41-1 through 3, NMSA 1978), which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony. Further, the Procurement Code (Sections 13-1-28 through 199, NMSA 1978) imposes civil and criminal penalties for its violation.

11.10 Code Compliance. The Design Professional affirms that the design shall be in compliance with Federal and State codes, regulations and laws applicable to the Work including, but not limited to, the New Mexico Building Code and New Mexico Fire Code. In all cases, the New Mexico Building Code shall govern in the event of any conflict. The Design Professional’s responsibility shall not extend to unwritten policies or interpretations of Officials that are not clearly defined by the Codes, Regulations or Laws.

11.11 Equal Opportunity Compliance: The Design Professional agrees to abide by Federal and State laws, rules and regulations and executive orders of the Governor of New Mexico pertaining to equal employment opportunity or deny from participation in, deny the benefits of or otherwise subject to discrimination under any activity performed under this Agreement any person on the grounds of race, color, religion, national origin, sex, sexual preference, age or disability. If the Design Professional or any Design Professional consultant is found not to be in compliance with these requirements during the term of this Agreement, the Design Professional agrees to take appropriate steps to correct this noncompliance.

11.12 Liability Insurance. Shall be in compliance with the RFP for the project or current New Mexico law, whichever is greater.

11.13 Assignment. The Design Professional shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the Owner.
11.14 Mergers, Dissolution, Successors, and Assigns. The Design Professional agrees that during the term hereof it will maintain its existing business structure, the terms and provisions hereof shall extend to, be binding upon, and inure to the benefit of the successors and assigns of the respective parties hereto, the business structure will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be:

1. assumes, is capable of, and agrees in writing to perform all of the obligations of the Design Professional hereunder;
2. qualifies to do business in the State of New Mexico, including providing a legal resident registered Design Professional or Design Professional or Engineer of New Mexico as Project Design Professional;
3. has the written approval of the Owner for such change in business structure;
4. unless the Project Design Professional remains same; and, if not
5. prior written approval is obtained from the Owner naming a new Project Design Professional.

11.15 Release. The Design Professional, upon final payment of the amounts due under this Agreement, releases the Owner, CNM and its officers and employees from any liabilities and obligations arising from or under this Agreement, including, but not limited to, all damages, losses, costs, liability, expenses, attorneys’ fees and costs of litigation that the Design Professional may incur.

11.16 Conformity with Law and Severability. Each and every provision of law and clause required by law to be inserted in this Contract shall be read and enforced as though it were included herein; and if through error or otherwise any such provision is not inserted, or is not correctly inserted, then upon the written application of either party the Contract shall be amended without cost to make such insertion or correction and that the remainder of this Agreement shall remain in effect and not be affected thereby. In the event that any provision of any contractual document shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

11.17 Exhibits and Attachments Incorporated by Reference. All exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to herein this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

11.18 Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

11.19 Entire Agreement. The Purchase Order along with this Agreement, the RFP# P-360, the offer represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
11.20 Indemnification. The 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.

11.21 Modification of the Agreement. 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 through an amendment and revision to the Purchase Order.

11.22 Effective Agreement. The Purchase Order along with this Agreement, the RFP# P-360, the Contractor’s offer to that RFP and all attachments shall become effective when signed by all parties required to sign this Agreement.

IN WITNESS THEREOF, the Parties hereto have extended this Agreement the day and year last set forth below:

Design Professional Firm

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Central New Mexico Community College

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