



## STATE OF NEW MEXICO

### GENERAL SERVICES DEPARTMENT PROPERTY CONTROL DIVISION

# GENERAL CONDITIONS of the AGREEMENT between the OWNER and the DESIGN PROFESSIONAL

2010 Edition, Version 1.0, Part B of the Agreement

THESE GENERAL CONDITIONS MAY BE TAILORED ONLY BY PERMISSION FROM PCD AND BY INSERTION OF MODIFYING LANGUAGE INTO PART A OF THE AGREEMENT, OTHER CONDITIONS AND SERVICES.

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## ARTICLE 1

### DEFINITIONS

For purposes of this Agreement, the following definitions shall apply throughout the contract and to all attachments incorporated herein, unless otherwise specified.

1.1 **DESIGN PROFESSIONAL:** The firm named in this Agreement which employs a registered Design Professional of New Mexico or an individual registered Design Professional of New Mexico. In the instance of a firm, the term "Design Professional" shall include the Project Design Professional.

1.2 **CENTRAL PURCHASING OFFICE:** The Central Purchasing Office is the Property Control Division (PCD), General Services Department, State of New Mexico.

1.3 **CODES:** All federal, state, and local codes applicable to the Project.

1.4 **CONSULTANT:** Any individual, firm, partnership, corporation or other entity that enters into an agreement with the Design Professional contracting with Owner for the purposes of fulfilling, or assisting the Design Professional in fulfilling the services required by this agreement between the Design Professional and Owner.

1.5 **DIRECT SALARY:** The gross wages, which do not include costs of employer beyond the amounts of the paychecks.

1.6 **GOVERNING AUTHORITY:** The Governing Authority for the award of construction contracts is the State Board of Finance, and the Governing Authority for the execution of construction contracts is the Director of the Property Control Division, General Services Department.

1.7 **MACC:** Maximum Allowable Construction Cost is the total sum available for construction purposes, and may include furnishings and equipment, but excludes professional fees, Owner's contingency funds and acquisition costs, and other costs which are the responsibility of the Owner as described in Article 5 and Article 6 of this Agreement.

1.8 **OWNER:** The Property Control Division, General Services Department, State of New Mexico.

1.9 **MOVEABLE EQUIPMENT.** Includes furnishings not provided as part of the construction work such as chairs, tables, desks, etc. Includes equipment that is not fixed to the building structure and/or is not permanently wired or plumbed in. Moveable equipment is not designed by the Design Professional nor installed by the construction contractor(s).

1.9 **PROJECT:** The Project is the total administration, design, construction and post-construction of which Work performed under this Agreement and the Construction Documents may be the whole or a part and which may include design or construction by the Owner or by separate professionals or contractors. The Project is further defined in Part A of Agreement.

1.10 **PROJECT DESIGN PROFESSIONAL:** The individual registered Design Professional of the State of New Mexico who shall sign and affix his New Mexico Design Professional's Seal to all plans, designs, drawings, specifications, and reports that involve the Project. The Project Design Professional shall be mutually agreed upon by Owner and Design Professional at the time this Agreement is entered into by the parties and shall be named herein.

1.11 REIMBURSABLE EXPENSES: Expenses not included in basic services compensation and are actual, incidental expenditures made by the Design Professional or its employees in the interest of the Project (while performing professional services pursuant to this Agreement) and limited in accordance with Article 6, and as otherwise authorized in writing by the Owner.

1.12 SITE: The physical location on which the Project is built, including all land acquired for the Project or associated with the Project, including surface drainage, wells, transmission lines, easements, rights-of-way, roadways and existing facilities that may be directly or indirectly affected by the Project or that might affect the Project.

1.13 USER (or USER AGENCY): The State agency or agencies or designated entity for whose use the Project is being constructed.

1.14 USER REPRESENTATIVE: The individual designated by the User with the authority to bind the User with respect to this Agreement. See also Article 3 herein.

1.15 OTHER DEFINITIONS: The remaining definitions are in Article 1, Definitions, of the Conditions of the Contract for Construction, as provided as a part of Exhibit G hereto.

## END OF ARTICLE 1

## ARTICLE 2

### DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES

**2.0 BASIC SERVICES:** The Design Professional shall furnish professional services with a Project described in Part A of this Agreement. The intent of this Agreement is to design completely functional and operational facilities within the identified project scope and cost limitation.

2.0.1 The Design Professional's basic services shall consist of the following:

- A. Programming Phase
- B. Schematic Design Phase
- C. Design Development Phase
- D. Construction Documents Phase
- E. Bidding or Negotiation Phase
- F. Construction Phase
- G. Project Closeout and 11-month Warranty Inspection Phase

The services to be provided during each phase listed herein include all consulting services required by the Design Professional to provide the professional architectural and engineering services incidental to the design and construction of the Project.

2.0.1.1 STANDARDS, POLICIES, AND GUIDES: The Owner has adopted certain design standards, policies, and guides in force at the time of execution of this agreement that shall be incorporated into the Design Professional's basic services. The Design Professional shall comply with all applicable design standards, policies, guides, and submission requirements as set forth in the PCD Capital Projects Design Procedures.

2.0.1.2 MEETINGS: The Design Professional shall be in attendance at, and record minutes of, all meetings required by this agreement throughout the course of the project as set forth herein. The Design Professional shall initiate additional meetings germane to the agreement when authorized, in writing, by the PCD Project Manager. The Design Professional shall distribute copies of meeting minutes to participants and other interested parties as directed by the PCD Project Manager within seven (7) calendar days. The Design Professional consultants shall attend each meeting as appropriate or as requested by the PCD Project Manager.

2.0.1.3 MONTHLY PROGRESS REPORTS: The Design Professional shall submit monthly progress reports of design/construction activities to the PCD Project Manager. Failure to submit monthly reports may result in delay to the Design Professional's progress payments. The report shall include:

- A. Activities completed and items pending since last report.
- B. Projected progress.
- C. Comparison of schedule to actual progress.
- D. Decisions or information required.

2.0.2 The Design Professional shall request from the User Representative the following:

A. Information sufficient for the Design Professional to develop program criteria including the User's goals, objectives, and needs, and the organizational chart of individuals, furnishings, and equipment that shall occupy the Project.

B. To the extent practicable and reasonable, the Design Professional shall incorporate the User Representative's requests into the documents for construction; however, the Design Professional is responsible solely to the Owner for the types of material incorporated into the construction, the size of the facilities constructed, and to design within the MACC.

C. A list (by manufacturer and model number) of special equipment (other than 110 volt, 60HZ, requiring less than 10 amps) that requires utility services, including but not limited to telecommunication equipment such as data transmission and computer lines that shall be designated by Department of Information Technology (DoIT), Infrastructure Voice Radio (IVR) (Telephone: 505.841.4269).

2.0.3 FURNISHINGS AND EQUIPMENT: The Design Professional shall provide dimensional, color finish, power, etc., information necessary to specify any moveable furnishings and equipment not included in the project. Dimensioned furniture plans shall incorporate and coordinate the requirements for electrical, communications, and data based on use and equipment, as well as the location of HVAC control devices and access panels. The Design Professional will be compensated with Additional Services for any design and specification related to moveable furnishings, fixtures and equipment requested by Owner beyond that described above, provided that the Design Professional is not obligated to perform, furnish or incur such services as a part of Basic Services.

2.0.4 TELECOMMUNICATIONS EQUIPMENT: Telecommunications or radio equipment for state facilities generally falls under the jurisdiction of the Department of Information Technology. The Owner will instruct the Design Professional when and/or where outlets, conduits, wiring, etc., are to be included in the Project. Coordinate with Utility companies and other agencies.

2.0.5 PROJECT LEGISLATION OR AUTHORIZATION: The Design Professional shall request from the Owner and the User copies of documents supporting the funding request that were presented to the State

Legislature or other regulatory agencies that provided funds for construction of the envisioned facility. These documents will be furnished for information only. The Owner will establish a budget for utilization by the Design Professional in the performance of the services.

**2.0.5.1 APPROPRIATIONS:** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Owner to the Design Professional. The Owner's determination that sufficient appropriations are not available shall be accepted by the Design Professional and shall be final. If the Owner proposes an amendment to the Agreement to unilaterally reduce funding, the Design Professional shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**2.0.6 SOFTWARE REQUIREMENTS:**

A. Drawing Formats. All CAD drawings shall be supplied in PDF format as well as in DWG format and be readable by the Owner-supported CAD desktop software (Autodesk AutoCAD). Being 'readable' means the ability to open a file without any errors (such as proxy, font substitution, etc.) and with objects, layers, and other file properties remaining intact.

B. Other Formats. File formats for word processor documents, spreadsheet documents, or slide presentations shall be those used by the Microsoft family of office software such as Word, Excel, and PowerPoint. Contact the Owner for version. Macros may be included with these documents provided they are virus free, their function is explained next to the code, and they are not write protected.

C. Graphics shall be submitted in TIF, GIF, JPG, CALS, or PDF file format (compressed image formats only). This option is intended for photos, conceptual sketches, etc., and not to indicate that raster file drawings will be accepted in place of AutoCAD DWG files.

D. Data file formats for projects that employ information contained in a database or spreadsheet shall be those used by one of the following: Oracle, Microsoft Access, Microsoft SQL, or Microsoft Excel. All linkages of non-graphical data with graphic elements, relationships between database tables, and report formats shall be maintained. All database tables shall conform to the structure and field naming guidance provided by the Owner. The Design Professional shall confirm database file format preference with the Owner prior to issuance of database file.

E. File formats for project management documents shall be either that used by Microsoft Project or hard copy. Confirm file format with the Owner. Save project files with baseline.

F. Deliverables integrating multiple file formats may be submitted as a PDF (version 4 or later) in addition to the base file structure. Examples include reports, photographs, and manuals created by using a variety of software packages and file formats. Confirm deliverable format preference with the Owner.

G. Building Information Modeling (BIM). Projects and project teams are encouraged to utilize 3D object model and other building information model technology and software applications (including during project stages of planning, design, construction, and handover to space management and facility operations and maintenance). Outputs from these applications are acceptable as deliverables to the Owner, provided that 2D output is also submitted that fully complies with all provisions herein.

2.0.7 CONSULTANTS: The Design Professional shall employ, or engage, and be contractually responsible for, consultants necessary for the performance of the services herein described and required to complete the Project scope. The Design Professional shall complete and submit Exhibit C listing consultants to be used on the Project. The Design Professional shall not engage any consultant to which the Owner has reasonable objection.

2.0.8 KEY PERSONNEL AND CONSULTANTS. The Design Professional's key personnel and consultants designated for this Project shall remain assigned for the duration of the Project. Any substitutions of the Design Professional's key personnel and consultants require written notification to the Owner and prior written consent of the Owner. Owner may require substitution of any personnel or consultants provided that Owner has first notified the Design Professional in writing and allowed a reasonable period for adjustments and/or corrections.

2.0.9 GEOTECHNICAL ENGINEERING: The Design Professional shall, during the Schematic Design Phase, 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 shall be Owner-provided, as Additional Service or a reimbursable expense.

2.0.10 CIVIL ENGINEERING: The Design Professional shall, during the Schematic Design Phase, submit to the Owner a statement of need and extent of civil engineering required for the project to protect new and existing structures on or around the site from adverse conditions. Extensive civil engineering, or civil engineering work outside of the immediate site proposed for the project, shall be an Additional Service or a reimbursable expense.

2.0.11 STANDARD OF CARE: The Design Professional represents that its officers, agents, 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. Such affirmation by consultants, sub consultants, joint ventures, and agents shall not be construed as a diminution of the Design Professional's liability and responsibilities to the Owner.

2.0.12 APPLICATION OF PROFESSIONAL SEALS: Final technical reports and all bidding documents shall contain a legible seal, signature, date and license expiration date of the design professional responsible for the document or under whose supervision the document was prepared. For project manuals and technical reports the seal shall be provided by the design professional responsible for the overall coordination of the project. If more than one design professional has responsibility for portions of the work, additional seals may be provided on the cover, or on a separate signature sheet immediately following the table of contents.

2.0.13 REVIEW PROCESS: Submit documents for review as required by the Agreement. The Design Professional shall provide five (5) sets of review documents for Owner for each review. Following the reviews, the Design Professional shall respond to the PCD Project Manager in writing to all review comments and questions within fourteen (14) calendar days.

## **2.1 PROGRAMMING PHASE**

2.1.1 The program shall establish goals, collect facts, identify concepts, analyze site, and determine functional needs necessary to complete the Project within the legislative mandate. Based on the data provided by the User Representative and pursuant to adequate consultation with the User Representative, the Design Professional shall prepare a document that adequately defines the scope of the Project. This document shall reflect the limits of the MACC and provide an estimated duration of Project construction schedule.

2.1.2 The Design Professional shall include in the program document the results of site investigation and the field verification of any information provided by the Owner and/or the User Representative.

2.1.3 The Owner and the User Representative shall work with the Design Professional to ensure that the information required by the Owner is made available to the Design Professional. This information and other requests concerning organization of functions shall be provided in the form of written memoranda.

2.1.4 The Owner shall schedule a meeting between the Design Professional and the User Representative to define the relationship among all parties. The Design Professional shall advise the Owner, in writing, of any information he requires which has not been provided by the Owner and/or the User Representative, or any conflicts between the established program requirements, the MACC, and the legislation authorizing the Project.

2.1.5 The Design Professional shall obtain the approval of the Owner, in writing, of the Program Phase before commencing work on the Schematic Design Phase. The Design Professional shall provide written confirmation, to be transmitted with the Program Document to the Owner, that the Design Professional has visited the site, familiarized himself with the local conditions under which the work is to be performed, correlated his observations with current code requirements and life safety needs, and has a clear understanding of existing conditions for the Project.

## **2.2 SCHEMATIC DESIGN PHASE**

2.2.1 From the approved program, the Design Professional shall produce studies consisting of drawings and other documents necessary to illustrate the general planning concepts, probable architectural, engineering, and building systems, types of materials envisioned and preliminary alternatives, a breakdown of the budget on current area, volume, or other unit costs, and the approximate dimensions of the programmed areas. The number of iterations of such studies produced shall be sufficient to accomplish and demonstrate a design concept for the Project satisfactory to the Owner. The Design Professional shall incorporate in the Schematic Design drawings and documents the provisions of the PCD Green Building Standards as provided as a part of Exhibit D and incorporated herein by reference. The current State-adopted Building Code and current ASHRAE 90.1 are incorporated into this Agreement by reference. Where applicable, the provisions of these documents shall apply. The Design Professional shall brief, and obtain the written approval of, the Owner of the Schematic Design drawings and documents. This review and approval shall include the life cycle costs required by Subparagraph 12.1.4. The Design Professional shall obtain the written approval of the Owner of one of the proposed design schemes, as modified by any comment during review, before commencing work on the Design Development Phase.

2.2.2 The Design Professional shall provide a feasibility report as part of this phase on the use of energy sources other than fossil fuels for the heating and air conditioning of the proposed building (Section 15-3-12, NMSA 1978).

2.2.3 The Design Professional shall request site survey data in accordance with Subparagraph 4.3.

2.2.4 The responsibility for bringing the Project within the MACC and compliance with construction directives remains with the Design Professional, as elaborated in Article 5 herein. 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 in writing, with proposed recommendations to reconcile the incompatibility.

### **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 consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the entire Project as to civil, structural, mechanical, plumbing, and electrical systems materials and such other design essentials as may be appropriate. Additionally, these documents shall identify design features, program modifications, the probable Project Schedule, equipment installed in the Project or furnishings required, and a statement that identifies the need for any additional data, surveys, or tests. The Design Professional shall provide sufficient, alternative design solutions on major design features to allow the Owner to ascertain that the recommended design achieves a practical programmatic and economic solution, within the limitations of the authorized program, schedule, and budget. Include staffing and occupancy considerations provided by Owner. The Design Professional shall acquire the approval, in writing, of the Owner of all documents associated with the Design Development Phase before commencing work on the Construction Documents Phase.

2.3.2 The Design Professional shall submit to the Owner for review and written approval a refined statement of Probable Construction Cost at the completion of the Design Development Phase. Should the Design Professional conclude, at any time, that the budget 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.

2.3.3 Should the Owner initiate or require a material change from the approved Design Development Documents and there is no fault or responsibility of the Design Professional related to the Owner's initiation or requirement of the change, the Design Professional's effort implementing said change(s) shall be compensated as an Additional Service and the schedule for delivery of Design Professional's services shall be equitably adjusted if/as appropriate.

### **2.4 CONSTRUCTION DOCUMENTS PHASE**

2.4.1 From the approved Design Development Documents, 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. These Construction Documents shall provide the detailed requirements for the successful construction of the entire Project.

2.4.2 Construction Documents shall include written and graphic elements indicating contracting requirements, specifications and contract drawings. If Contractor(s) is to provide professional design services, layouts of equipment or certifications related to systems, materials or equipment that are not included in these 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 Contractor shall not be responsible for the adequacy of the performance or design criteria specified by the Design Professional and required by the Construction Documents.



2.4.3 In preparing the Construction Documents, the Design Professional shall, in consultation with the Owner, prepare the necessary bidding or proposal information, bidding or proposal forms, and the project manual, which shall include the Conditions of the Contract for Construction (general, supplementary, and other conditions of the contract), and the Standard Form of Agreement between Owner and Contractor. The Design Professional shall incorporate in the Invitation to Bid or Request for Proposal documents the provision of Information Available to Bidders as provided as a part of Exhibit G and incorporated herein by reference.

2.4.3.1 The Invitation to Bid shall be prepared by the Design Professional or as directed by Owner, and shall include the bid date, location and time, which shall be prepared by the Owner and Design Professional and submitted to the State Purchasing Division of the General Services Department during the Bidding Phase by the Owner. The Design Professional shall assist the Owner in filing the required documents for the approval of any governmental or other authorities having jurisdiction over the Project assigned.

2.4.3.2 The Request for Proposals (RFP) for Construction shall be prepared by the Design Professional or as directed by the Owner, and shall include the RFP date, location and time, which shall be prepared by the Owner and Design Professional and submitted to the Director, Property Control Division of the General Services Department during the Construction Documents Phase by the Owner. The Design Professional shall assist the Owner in filing the required documents for the approval of any governmental or other authorities having jurisdiction over the Project assigned.

2.4.3.3 Construction Drawings: In addition to the electronic CAD files, PDF files and related electronic documents, the Design Professional shall provide one full drawing set to the User Representative and one full drawing set to the Owner. Hand-drawn drawings, when approved in advance by the Owner, shall be prepared on non-glossy polyester film 3-mil thickness minimum. Standard Sheet sizes may be Architectural sizes 24" x 36" or 30" x 42".

2.4.3.4 Electronic Data: The Owner requires that final Construction Documents and Specifications are prepared using computer technology in the formats prescribed in Subparagraph 2.0.6.

2.4.6 Only materials and systems available at the time of this Agreement or reasonably believed to become available prior to the expiration of the Construction Contract shall be specified in the Contract Documents. The Bidding or RFP Documents shall include a list of those items (or categories of items) for which shop drawings or submittals are required.

2.4.4 The Design Professional shall furnish Bidding or RFP Documents to the Owner bearing the approval of the following:

- A. Construction Industries Division, Regulation and Licensing Department;
- B. If applicable, Occupational Health and Safety Bureau, Environmental Protection Division, Environment Department;
- C. If applicable, the Health Facility Licensing and Certification Bureau, Health Improvement Division, Department of Health;
- D. If applicable, the New Mexico Environment Department;
- E. The Energy, Minerals, and Natural Resources Department; and
- F. Department of Information Technology (DoIT), Infrastructure Voice Radio (IVR)

2.4.5 The Design Professional shall provide a signature-approval block on the front sheet of the drawings and specifications for:

- A. User Agency (ies),
- B. Property Control Division Project Manager, Staff Architect, and Director,
- C. Utility companies (as appropriate),
- D. Design Professional Certification: Project meets as a minimum – current ASHRAE 90.1, requirements, and
- E. Department of Information Technology, IVR (as appropriate)

The Design Professional shall obtain review and signatures of all.

2.4.6 Project Wage Rate Determination: The Design Professional shall request from the State of New Mexico Labor and Industrial Division a minimum wage rate determination for the Project pursuant to Section 13-4-11, NMSA 1978. The Design Professional shall provide the Division a description of the Project, an estimate of construction cost, an approximate bid or proposal opening date, and any other pertinent information required by the Labor and Industrial Division. The Design Professional shall include the wage rate determination in the Bidding or RFP Documents.

2.4.7 Upon completion of the Construction Documents, the Design Professional shall brief the Owner and User Representative on the Bidding or RFP Documents, specifically addressing previous Owner concerns and requirements. At this briefing, the Design Professional shall furnish to the Owner a final and detailed statement of probable construction cost, including an updated Project schedule. The Design Professional shall pay any fees incurred in the preparation of the detailed cost estimate provided by the Design Professional.

2.4.8 The responsibility for bringing the Project within the Maximum Allowable Construction Cost (MACC) and compliance with construction directives remains with the Design Professional, as elaborated in Article 5. 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 in writing, with proposed recommendations to reconcile same.

2.4.9 The Design Professional shall return all original documents and drawings provided under Sub paragraph 4.3 to the Owner upon the Owner's request, but in no case later than when the Construction Documents Phase has been completed. Payment for the Construction Documents Phase will not be made to the Design Professional until the Owner has received said documents and drawings.

2.4.10 The Design Professional shall acquire the approval, in writing, of the Owner of all documents, and any and all bid alternates, associated with the Construction Documents Phase before commencing work on the Bidding Phase.

## **2.5 BIDDING PHASE**

2.5.1 The Design Professional, following the Owner's written approval of the Bidding or RFP Documents, shall assist the Owner in obtaining bids or proposals and in awarding and preparing contracts for construction. The finalized Invitation to Bid or the Request for Proposal for Construction shall be prepared by the Owner and forwarded to the Design Professional for bidding purposes. For Invitations to Bid, the Owner shall issue a purchase requisition authorizing the State Purchasing Division to advertise for the Project.

2.5.2 The Design Professional shall provide sets of Bidding or RFP Documents as required to the Owner, sets as required by the reviewing agencies, and sets as appropriate to all prime Bidders or Offerors requesting documents for bidding or proposal purposes. Prime Bidders or Offerors shall be defined as

General Contractors, who will be allowed no more than three sets; major subcontractors as listed in the form; or other major suppliers.

2.5.2.1 The Design Professional shall provide an additional number of documents to be placed in plan rooms as well as in the Design Professional's office for review by prospective Bidders or Offerors.

2.5.2.2 The Design Professional shall also make sets available to other prospective parties as requested. The Design Professional may charge the cost of reproduction to the party requesting the documents.

2.5.3 The Design Professional shall clarify and answer any questions about the Bidding or Proposal Documents during the bidding or proposal process and shall issue Addenda as required to all Bidders or Offerors, the State Purchasing Office, the Property Control Division, as applicable, the Owner, and the User(s).

2.5.3.1 All addenda, including all revised drawings and sections, must be approved by the Owner prior to distribution. The Design Professional shall allow sufficient time for Owner review and acceptance of each addendum.

2.5.4 The Design Professional shall provide assistance to the Owner to identify the apparent successful bidder(s) or proposal(s) and shall provide written recommendation to accept or reject the bids and/or related proposals.

2.5.5 The Design Professional shall not discuss with bidders, offerors, news media, etc., any presumption of award until the award is decided by the Owner.

## **2.6 CONSTRUCTION PHASE--ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

2.6.1 The Construction Phase will commence with the award of the Contract for Construction and continues until the eleven-month inspection and report is submitted by the Design Professional and approved by the Owner.

2.6.2 The Design Professional shall provide administration of the construction contract as required and defined in the Conditions of the Contract for Construction. The extent of the Design Professional's duties and responsibilities and the limitations of his authority there under shall not be modified without the Owner's written consent.

2.6.3 The Design Professional shall be the representative of the Owner during the Construction Phase and shall advise and consult the Owner. Instructions to the Contractor shall be forwarded only through the Design Professional. The Design Professional shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents and any amendments thereto.

2.6.4 The Design Professional shall at all times have access to the Work, whether it is in preparation or progress.

2.6.5 The Design Professional shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the Contractor. The Design Professional shall make periodic visits to the site at such other times as appropriate during the progress of the Work for the purposes of notifying the Owner on the progress and condition of the Work and adequately represent the Owner. Additionally, the Design Professional shall familiarize himself with the progress and quality of the Work and determine if the Work is proceeding substantially in accordance with the Contract Documents. On the

basis of on-site observations, the Design Professional shall endeavor to guard the Owner against defects and deficiencies in the construction. Should the Design Professional determine that any portion of the Work varies from the requirements of the Contract Documents, he shall immediately notify the Contractor and the Owner of the nature of the work required to correct such non-compliance.

2.6.6 The Design Professional shall provide a minimum of weekly on-site observations during the construction phase in an attempt to guard the Owner against defects and deficiencies in the construction, in addition to critical inspections and other reviews and evaluations required by the progress of the Work. The results of all on-site observations shall be documented in field reports submitted to the Owner within seven (7) days of each such site visit.

2.6.7 The Design Professional shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, subcontractors, or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

2.6.8 The Design Professional shall determine, certify, and make recommendations to the Owner for payment of the amounts owing to the Contractor subject to the Owner's approval, based on observations at the site and on evaluations of the Contractor's Applications for Payment. The Design Professional shall issue Certificates for Payment in such approved amounts as provided in the Contract Documents.

2.6.9 The issuance of a Certificate and recommendation for payment shall constitute representation by the Design Professional to the Owner, based on the Design Professional's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that the quality of the Work is substantially in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, 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 Contractor has used the money paid on account of the Contract Sum.

2.6.10 The Design Professional shall render interpretations of the documents necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions within a reasonable time on all claims, disputes, and other matters in questions between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

2.6.11 Interpretations and decisions of the Design Professional shall be consistent with the requirements and intent of the Contract Documents and shall be in written or graphic form.

2.6.12 The Design Professional's decisions in matters relating to artistic effect shall be final if consistent with the requirements of the Contract Documents.

2.6.13 The Design Professional shall have authority to reject work that does not conform to the Contract Documents. Where rejected Work is not promptly corrected, the Design Professional shall recommend to the Owner that the Work shall stop. Whenever, in the Design Professional's professional opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Design

Professional will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed, or completed.

2.6.14 The Design Professional shall review the Contractor'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 Contract Documents; and, for each submittal, the Design Professional shall designate in writing that the Design Professional

- A. Takes no exception to this submittal,
- B. Rejects the submittal,
- C. Requires corrections as noted by the Design Professional,
- D. Requires revisions and resubmitted to the Design Professional,
- E. Requires the Contractor to submit the specified item, or
- F. Approves as corrected.

Such action shall be taken with reasonable promptness so as to cause no delay. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.15 Necessary professional services or construction required to repair or overcome problems caused by the Design Professional's errors, omissions, inadequacies, or changes not authorized by the Owner in the preparation of the documents or design shall be the responsibility of the Design Professional or its consultants, without additional cost to the Owner.

2.6.16 All Change Orders, defined in the Conditions of the Contract for Construction, shall be prepared by the Design Professional. Such Change Orders shall not become effective or binding on the Owner or Contractor until signed by the Owner and others whose signatures are required therein. Attached in Exhibit G and incorporated into this Agreement by reference is a copy of the Change Order form. Using this form, the Change Order shall be initiated by the party requesting a change. Approval in writing by the Owner of a completed Change Order modifies this Contract for construction to the extent indicated. No Work that could reasonably be expected to alter the contract price or materially alter the Project shall be undertaken until the Owner has approved a completed Change Order that outlines the desired change. Any deviation from the above described Change Order process shall be considered a material breach of this Contract. The Owner reserves the right to seek remedy from the Design Professional for Change Orders made necessary due to the Design Professional's errors and omissions.

2.6.17 Upon prior notice to the Owner, the Design Professional shall make observations to determine the Dates of Substantial Completion and Final Completion. The Design Professional shall obtain and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Design Professional shall then issue a final Certificate for Payment.

2.6.18 The extent of the duties, responsibilities, and limitations of authority of the Design Professional as the Owner's representative during construction shall not be modified or extended without written consent of the Owner and the Design Professional.

2.6.19 Should the Design Professional, his staff, or his consultants direct the Contractor or his Subcontractors to undertake work for which additional compensation could reasonably be expected, and if such work is not

- A. An emergency endangering life and property,

- B. Required by the Contract Documents, or
- C. Required by approved Change Orders (signed by the Design Professional, the Owner, and the Contractor),

payment for such work, if accomplished without written authorization, shall not be borne by the Owner and shall constitute adequate grounds for dismissal or other action against the Design Professional.

2.6.20 As part of the Design Professional's Basic Services, the Design Professional shall modify the original reproducible drawings and the Project Manual, delineating recorded built conditions of the Project or record documents compiled from the records of the Contractor and the Design Professional, showing all changes in the Work. This set of Documents shall also include record documents showing actual location of all Work.

2.6.21 Record Drawings: Record drawings and documents are to be delivered to the Owner within 30 days following Substantial Completion of the project by the Design Professional. Record Drawings shall be produced by the Design Professional and shall consist of a set of reproducible drawings sheets, based on a Mylar format, specifications on 8 ½ X 11 in. paper and shall provide all the As-built conditions documented by the Contractor for the project. The Design Professional shall also provide to the Owner a set of PDF drawing files and CAD drawing files formatted on CD-ROM with file format to follow the standard utilized by the Owner at the time of this agreement. The CD-ROM files shall duplicate the conditions documented on the Mylar Record Drawings. Further, the Design Professional shall deliver three (3) sets of the operations and maintenance manuals, hard copy and electronic, training videos, written warranties and related documents.

## **2.7 PROJECT CLOSEOUT AND 11 MONTH WARRANTY INSPECTION PHASE**

2.7.1 **General.** The Design Professional shall submit to the Owner his recommendation regarding the completion of all contracts. The Design Professional shall obtain from the contractor all releases, waivers of lien, guarantees, warranties, maintenance data, bonds, and acknowledge receipt of the contractor's record drawings. The Design Professional shall obtain and deliver to the PCD Project Manager a signed receipt for all materials turned over.

2.7.2 The Design Professional shall attend one design process analysis meeting to assess implementation of sustainable design and construction requirements into the project and review any lessons learned from the overall effort (see Exhibit D PCD Green Building Standards).

2.7.3 **Eleven Month Inspection and Report.** The Design Professional shall, eleven months after substantial completion of the project, schedule a meeting with the Owner, User Representative, and Design Professional's consultants to evaluate the building and its operations, inspect architectural systems, and endeavor to discover defects in materials, equipment, and workmanship. The Design Professional shall provide a written report of this activity to the Owner and the using agency within seven (7) calendar days. The Owner, through the Design Professional, shall notify affected contractor of any corrective action noted in the report.

## **2.8 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

2.8.1 Design Professional's Project Representative: If the Owner and the Design Professional agree that more extensive representation for observation of the Site than that described in Subparagraph 2.6.6 shall be provided, the Design Professional shall, upon written authorization of the Owner, provide one or more Project Representatives to assist the Design Professional in carrying out such responsibilities at the site.

2.8.2 Subject to the Owner's approval, a Design Professional's Project Representative shall be selected, employed, and directed by the Design Professional. The Design Professional shall be compensated therefore as mutually agreed between the Owner and the Design Professional as set forth in an approved amendment to this Agreement, which shall, in addition, describe the duties, responsibilities, and limitations of authority of such Project Representative(s).

2.8.3 Through the observations of such Project Representative(s), the Design Professional shall provide further protection for the Owner against defects and deficiencies in the Work to determine that the Work is carried out in conformance with the plans and specifications; but the furnishing of such project representation shall not diminish the rights, responsibilities, or obligations of the Design Professional as described in this Agreement.

2.8.4 The Owner reserves the right to designate an Owner Representative in lieu of a Design Professional's Project Representative to provide additional site representation for the Owner beyond that provided by the Design Professional. If the Owner elects to provide an Owner Representative in lieu of a Project Representative, this subsection shall not diminish the rights, responsibilities, or obligations of the Design Professional established in this Agreement. The Owner Representative's duties and limits of authority shall be established so as not to conflict with those of the Design Professional. The Design Professional shall cooperate with the Owner Representative in the performance of his duties.

2.8.5 The Owner reserves the right to employ an independent cost consultant to provide value and cost architectural or engineering services on the Project. If a cost consultant is retained, an amendment to this Agreement will be required identifying the duties and limits of authority of the cost consultant. The Design Professional shall cooperate with the cost consultant in the performance of the cost consultant's duties.

## **2.9 ADDITIONAL SERVICES**

Additional Services of the Design Professional are services that are in addition to but not included in basic services, provided that the Design Professional is not obligated to perform, furnish or incur such services as a part of the Design Professional's basic services. These services may be identified as part of the Design Professional's fee proposal and included with the lump sum fee as such. These services shall be provided when authorized in advance in writing by the Owner, and they shall be paid for by the Owner as provided in Subparagraph 13.3. Attached as Exhibit E and incorporated into this Agreement by reference is a copy of the Design Professional Additional Services Proposal/Amendment form. Additional Services may include but are not limited to the following:

2.9.1 Providing financial feasibility or other special studies.

2.9.2 Providing planning surveys, site evaluations, environmental impact studies, or comparative studies of prospective sites other than those services required under Basic Services to provide a complete and operable facility.

2.9.3 Providing services related to future facilities, systems, and equipment that are not intended to be constructed during the Construction Phase.

2.9.4 Making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control or not the responsibility of the Design Professional. This does not apply to revisions necessary for final approval of Programming, Schematic Design Studies and Statement of Project scope, and Design

Development Documents, or to revisions necessary to bring the Project within the designated MACC. The Design Professional shall receive written authorization from the Owner before commencing work on any change or alteration to the Contract Documents.

2.9.5 Preparing drawings, specifications, and supporting data and providing other services in connection with Change Orders, provided that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not for work which should have been provided pursuant to Basic Services and provided that such Change Orders are required because of causes not related to the actions or responsibilities of the Design Professional.

2.9.6 Conducting investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities when such work is not covered by this Agreement.

2.9.7 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such Work.

2.9.8 Providing tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

2.9.9 Providing all required work for design, selection, and preparation of contract documents, and bidding for the procurement of furniture, fixtures, and related equipment. Following installation of furniture, fixtures and equipment, 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.

## **2.10 TIME**

2.10.1 The Design Professional shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Design Professional shall submit, for the Owner's approval and as a part of this Contract, a schedule for the performance of the Design Professional's services and shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause not within the control of the Design Professional, be exceeded by the Design Professional (see Exhibit A, Time Schedule for Project Phases). Failure of the Design Professional to perform within this schedule except through authorized extensions thereto shall constitute a basis for termination and/or withholding of payment until schedule compliance is achieved by the Design Professional.

2.10.2 Time of Essence: All time limits stated in this Agreement are of the essence in the performance of this Agreement.

2.10.3 Term: This Agreement shall terminate **48** months from the Department of Finance and Administration approval unless terminated sooner pursuant to Article 10 herein.

## **END OF ARTICLE 2**

## **ARTICLE 3**



## **THE USER REPRESENTATIVE**

3.0 The Owner shall designate one or more agencies of the State of New Mexico or a designated entity as a User, or User Agency. Such User, or User Agency, shall provide an individual User Representative to perform those functions required of the User Agency.

3.1 The User Representative(s) and the Owner shall provide the Design Professional with information required under Article 2 herein, 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.

3.2 The User Representative(s) shall meet with the Design Professional and/or the Owner at times required by the Owner. The User Representative(s) shall respond to all inquiries submitted by the Design Professional and/or the Owner within any time limits set forth in the inquiry.

3.3 Information submitted directly by the User Representative(s) to the Design Professional is subject to subsequent approval by the Owner.

## **END OF ARTICLE 3**

## **ARTICLE 4**

### **OWNER'S RESPONSIBILITIES**

4.1 The Owner may designate, in writing, a representative authorized to act in his behalf, however, authority for final approval of the Project Phase Documents, the Contract Documents, or any Change Order is retained by the Owner. 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.

4.1.1 The Owner may designate a Project Manager for the project who shall be the Owner's primary representative in the administration of this Agreement. The Design Professional will report to the Owner's Project Manager. The Project Manager shall be the liaison between the Design Professional and the User Agency. All correspondence between the Design Professional and the User Agency shall be communicated to the Project Manager.

4.2 The Owner shall ensure review by, and obtain the concurrence of the User Representative, in writing, of each project phase and shall notify the Design Professional of the accord.

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, and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

4.3.1 When documents and drawings provided under Subparagraph 4.3 are furnished to the Design Professional, payment for the Construction Documents Phase will not be made to the Design Professional until the Owner has received all said documents and drawings.

4.3.2 The Owner reserves the right not to provide certain project-related documents or drawings to the Design Professional at the Owner's discretion.

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

4.5 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Design Professional's services and of the Work.

#### **END OF ARTICLE 4**

### **ARTICLE 5**

#### **CONSTRUCTION COST**

##### **5.1 RESPONSIBILITY FOR CONSTRUCTION COST**

5.1.1 When the detailed statement of probable construction cost required by Subparagraph 2.4.7 or an evaluation prepared by the Design Professional indicates that the Project exceeds the MACC, the provisions outlined in Subparagraphs 5.1 through 5.6 shall apply.

5.2 Evaluations of the Owner's Project budget, statements of probable construction cost, and detailed estimates of construction cost prepared by the Design Professional represent the Design Professional's best judgment as a design professional familiar with the construction industry. It is recognized, however, that the Design Professional does not have control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding, market, or negotiating conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established, or approved by the Owner, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Design Professional.

5.3 The MACC may be adjusted by the Owner at the completion of the Programming Phase, and the design fees modified. The MACC, at the start of the Schematic Design Phase, may only be adjusted based upon modifications to the Scope of Work approved in advance by the Owner. The Design Professional shall notify the Owner in writing at any time the estimated cost of construction is expected to exceed the MACC. The Design Professional's written notification shall include a detailed explanation and shall provide suggestions for reducing the estimated cost so that it does not exceed the MACC. The Owner agrees to cooperate with the Design Professional and permit reasonable and necessary revisions or reductions to the scope of the Project. The Design Professional agrees to revise the drawings and specifications as necessary at no additional expense to the Owner, if so requested by the Owner, in order to bring the estimated cost within the MACC.

5.4 The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. The Design Professional shall be permitted to determine what materials, equipment, component systems, and types of construction are to be included in the Bidding or Proposal Documents to bring Construction Cost within the MACC. With the written consent of the Owner, the

Design Professional may also include in the Bidding or Proposal Documents either additive or deductive alternate bids or proposals to adjust the Construction Cost to the fixed limit.

5.5 If bidding or negotiations with potential contractors have not commenced within two months after the Design Professional submits Bidding or Proposal Documents to the Owner, the Project budget and/or MACC shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Bidding or Proposal Documents to the Owner and the date on which proposals are sought.

5.6 The MACC, therefore, is established as a condition of this Agreement. When it is exceeded by the lowest bona fide bid, the Owner may;

- A. Give written approval of an increase in the MACC; or
- B. Authorize re-bidding the Project within a reasonable time, and
- C. Cooperate with the Design Professional in revising the Project scope and, as required, to reduce the Probable Construction Cost; and

If the Owner elects to reduce the Probable Construction Cost, the Owner shall cooperate with the Design Professional in revising the quality and scope of the Project; and the Design Professional, without additional charge for services or re-printing of the Drawings and Specifications, shall modify the Drawings and Specifications as necessary to bring the Construction Cost within the MACC. The Design Professional shall then assist the Owner through the Bidding process (see Subparagraph 2.5).

## END OF ARTICLE 5

## ARTICLE 6

### REIMBURSABLE EXPENSES

6.1 Reimbursable expenses are those in addition to basic services compensation and are the actual, incidental expenditures made by the Design Professional or his employees in the interest of the Project. **The Design Professional shall incur no expenses for which the Design Professional is entitled reimbursement until the Owner gives written approval.** Reimbursable expenses shall include but not be limited to the following:

6.1.1 Expenses of transportation when traveling in connection with the Project when specifically set out in Other Conditions or Services (Part A of Agreement). Such expenses are limited to per diem and mileage rates as set forth in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8, NMSA 1978, and DFA Rule 95-1 as amended, except that the Owner shall authorize such travel in advance.

6.1.2 Expense of fees paid for securing approvals of authorities having jurisdiction over the Project.

6.2 The Design Professional shall charge Bidders or Offerors a deposit fee equal to the full cost of reproduction of drawings, specifications, and other documents required by the Owner to solicit bids or proposals and execute the Construction Contract. This fee shall be completely refunded if the documents are returned in usable condition within the time limits specified in the Invitation to Bid or Request for Proposals. All forfeited fees shall be returned to the Owner.

6.3 Construction documents and specifications will be printed under the terms of a contract between the State Purchasing Division and the current Vendor on contract. **All reproduction required must be approved in writing by the Owner prior to request.** This expense shall be paid by the Owner for the initial Bidding and by the Design Professional for subsequent Biddings (see Subparagraph 5.6). All other reproductions as may be required for the Owner's review or for the office use of the Design Professional and the Design Professional's consultants shall be provided as part of the Design Professional's Basic Compensation.

6.4 Applicable gross receipts taxes (GRT) on reimbursable expenses or Additional Services received by the Design Professional under the provisions of this Contract shall be paid by the Design Professional. The Design Professional shall use and require the use of Tax Exempt Certificates by Consultants and Suppliers whenever allowed by law. In any event, the Design Professional shall not include taxes paid as a part of the base dollar amount upon which taxes are calculated.

## **END OF ARTICLE 6**

## **ARTICLE 7**

### **PAYMENTS TO THE DESIGN PROFESSIONAL**

#### **7.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

7.1.1 Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of services as set forth in Part A of this Agreement.

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:

- A. The lowest bona fide bid or negotiated proposal, or
- B. If no such bid or proposal is received, the most recent Statement of Probable Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

#### **7.2 PAYMENT FOR SERVICES AND COSTS**

7.2.1 The Design Professional shall submit monthly, a fully completed request for payment for all services and costs on the form provided as Exhibit F to this Agreement.

7.2.1.2 The Owner reserves the right to require the Design Professional to submit electronic pay requests.

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

#### **7.3 PAYMENTS WITHHELD**

7.3.1 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 Contractors, or on account of the cost of changes in the Work other than those for which the Design Professional may be legally liable in accordance with this Agreement.

7.3.2 In the event the Owner receives Notice from any person, Consultant, Sub consultant, or other third party, that the Design Professional has failed to pay such person(s) for Work performed in accordance with Agreements, the Design Professional shall, at the request of the Owner, and in no more than ten (10) calendar days, provide all documentation the Owner believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event the Owner determines the claim to be valid and payment is due, or in the absence of aforementioned documentation, the Owner may authorize direct payment of any unpaid bills, withholding from the Design Professional's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the Design Professional. In no event shall these provisions be construed to impose any obligations upon the state to the Design Professional.

#### **7.4 PROJECT SUSPENSION OR TERMINATION - OTHER PARTIES**

7.4.1 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 date pursuant to Article 10.

**END OF ARTICLE 7**

## ARTICLE 8

### DESIGN PROFESSIONAL'S RECORDS AND AUDIT

8.1 Records of expenses by the Design Professional and his consultants pertaining to all services under this Agreement shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the Owner or the Owner's authorized representative. The Owner shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Owner to recover excessive or illegal payments.

8.2 Records of expenses shall be kept by the Design Professional and his consultants and shall be available to the Owner until all applicable Statutes of Limitations have run, and this provision shall survive and continue beyond the termination of other terms of this Agreement.

8.3 These records shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor and shall be maintained for inspection for a period of three (3) years. Billings may be audited both before and after payment; and payment by the Owner under this Agreement shall not foreclose the right of the state to recover excessive or illegal payments.

### END OF ARTICLE 8

## ARTICLE 9

### OWNERSHIP AND USE OF DOCUMENTS

9.1 Original construction document drawings, designs, specifications, notes, project manuals, and/or related documents and other 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. The Owner shall keep these documents on file. The Design Professional may maintain a complete reproducible set of any and all record documents developed under this Agreement.

9.2 All documents, including drawings and specifications prepared by the Design Professional pursuant to this Agreement are instruments of service in respect to the 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.

9.3 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 Subparagraph 9.2.

9.4 **Copyright:** 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.

### END OF ARTICLE 9

## ARTICLE 10

## TERMINATION OF AGREEMENT

10.1 If either party should fail to fulfill in a timely and appropriate manner his obligations under this Agreement, or if either party should violate any of the covenants, agreements, or stipulations of this Agreement, the non-breaching party, in addition to remedies available under the terms of this Agreement, shall thereupon have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. The Design Professional shall be responsible for all consequential costs that may arise out of the Design Professional's failure to complete the services in accordance with the schedule attached as Exhibit A.

10.2 In the event that the Project is abandoned by the Owner, the Owner may terminate this Agreement at any time by giving at least seven (7) days' notice in writing to the Design Professional.

10.3 In the event of termination, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Design Professional under this Agreement shall become the Owner's property, and the Design Professional shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by the Owner which are then due.

10.4 Termination: This Agreement may be terminated by either of the parties hereto without cause upon written notice delivered to the other party at least ten (10) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

## END OF ARTICLE 10

## ARTICLE 11

### GENERAL AND SPECIAL PROVISIONS

11.1 **Governing Law.** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico pursuant to NMSA 1978 §38-3-1.

11.2 **Liability and Claims.**

11.2.1 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.

11.2.2 The Owner and the Design Professional waive all rights against each other and against the contractors, 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 Exhibit G. The Owner and the Design Professional each shall require appropriate similar waivers from their contractors, consultants, and agents.

11.3 **Indemnification.** The Design Professional shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Design Professional, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Design Professional or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Design Professional or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Design Professional, the Design Professional shall as soon as practicable but no later than five (5) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

11.4 **Effective Agreement.** This Agreement shall not become effective until:

- A. Approved by the State Contracts Officer, Department of Finance and Administration, for compliance with the financial requirements of the legislation or funding source authorizing the Project and compliance with the requirements of all other legislation pertaining to the expenditures of public funds (if over \$250, or if the original amount combined with this or any other amendment is \$250 or more); and
- B. Signed by all parties required to sign this Agreement.

11.5 **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 neither he nor anyone employed by him shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, or supplier, except when the Project is a design-build project and/or the Owner provides inspections independent of the Design Professional. Design Professional certifies that Design Professional is in compliance with the Governmental Conduct Act pursuant to NMSA 1978 §10-16-1 through §10-16-18 regarding contracting with a public officer or current or former state employee.

11.6 **Penalties for Violations of Laws.** 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.

11.7 **Code Compliance.** The Design Professional's design shall be in compliance with Federal, State, and local codes and laws applicable to the Work, including but not limited to provisions of the Civil Rights Act of 1964 and Executive Order 11246, Title VI, Sections 3 and 109; the minimum handicapped accessibility as required by Section 60-13-44D, NMSA 1978; Section 306, New Mexico Building Code, which adopts ANSI A117.1, 2003; and parking requirements as required by Section 15-3-19, NMSA 1978. In all cases, the more restrictive code or statute adopted by the Construction Industries Division of the Regulation and Licensing Department shall govern.

11.8 **Equal Opportunity Compliance.** The Design Professional agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining



to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Design Professional assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Design Professional is found not to be in compliance with these requirements during the life of this Agreement, Design Professional agrees to take appropriate steps to correct these deficiencies.

#### **11.9 Evidence of Insurance.**

**11.9.1 Professional Liability.** The Design Professional shall obtain Professional Liability insurance and provide a Certificate of Coverage on the form designated herein as Exhibit B. Such insurance coverage shall be maintained in full force and effect at all times during the performance of Project services and for a period thereafter of not less than three (3) years following Substantial Completion of the Work. Insurance coverage shall not be cancelled or materially modified without forty-five (45) days notice to the Owner. Said coverage shall be written by an insurer licensed to do business in the State of New Mexico and acceptable to the Owner. Proof of compliance with this section shall be provided by the Design Professional to the Owner in each year insurance is required. Fees for such insurance shall be at the Design Professional's expense and of the following limits of liability:

**11.9.1.1** For projects with a MACC greater than \$500,000, the Design Professional's Professional Liability insurance, shall have a limit of no less than \$1,000,000 per occurrence and in the aggregate, unless as otherwise provided in Other Conditions or Services (Part A of Agreement).

**11.9.2 Comprehensive General Liability.** The Design Professional shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for all operations performed for the Owner by the Design Professional.

**11.9.3 Design Professional's Consultants.** The Design Professional shall require that liability insurance is maintained in accordance with Subparagraph 11.9 and may, at Design Professional's option, either insure the activities of its Consultants or require them to maintain insurance to cover all claims in Subparagraph 11.9. If the Owner is damaged by the failure or neglect of the Design Professional to maintain insurance as described above, then the Design Professional shall be liable for all costs and damages properly attributable thereto.

**11.9.4 Possible Future Increase in Limit Amounts.** If, during the term of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978, the Owner may require the Design Professional to increase the maximum limits of any insurance required herein.

**11.10 Worker's Compensation.** The Design Professional agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If the Design Professional fails to comply with the Worker's Compensation Act and application rules when required to do so, the contract may be cancelled effective immediately.

**11.11 Independent Contractor.** The Design Professional and his agents and employees are independent contractors performing professional and technical services for the Owner and are not employees of the State of New Mexico. The Design Professional and his agents and employees shall not as a result of this

Agreement accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to employees of the State of New Mexico.

11.11.1 The Design Professional agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the Design Professional has express written authority to do so, and then only within the strict limits of that authority.

11.12 **Consultant Relations.** In the event that the Design Professional subcontracts out any portion of his duties or responsibilities under this Agreement, or if the Design Professional hires consultants to assist him with his duties or responsibilities under this Agreement, the Design Professional shall require that all terms of this Agreement applicable to the consultant, subcontractor, or joint venturer shall be incorporated into any contract or agreement entered into with such consultant, subcontractor, or joint venturer.

11.13 **Amendment.** This Agreement shall not be altered, changed, modified, or amended except by instrument in writing executed by the parties with all appropriate required signatures. No Design Professional may contract for an additional Project Representative to be on the Project, or enter into a joint venture to share the duties and responsibilities of the Design under this Agreement without the express written approval by Owner. Any such Agreement must outline the duties and responsibilities of the Design Professional and his representative, or joint venturer, or consultant; and a copy of such approved agreement shall be filed with the Owner. Such agreements shall be amendments to this Agreement.

11.14 **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.

11.15 **Release.** The Design Professional, upon final payment of the amounts due under this Agreement, releases the Owner, his officers and employees, and the State of New Mexico from his liabilities and obligations arising from or under this Agreement, including, but not limited to, all damages, losses, costs, liability, and expenses, including but not limited to attorney's fees and costs of litigation that the Design Professional may incur.

11.16 **Owner's Approval.** No work requiring the approval of the Owner shall be undertaken until the Owner's written approval has been requested and obtained. Any deviation from this requirement shall be considered a material breach of this Agreement and grounds for immediate termination pursuant to Article 10 of this Agreement.

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

11.18 **Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

11.19 **Captions and Section Headings.** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

11.20 **Labor-Management Relations.** During the entire term of this Agreement, the Design Professional shall take good-faith steps necessary to further satisfactory labor-management relations to the end that the

operations of the Design Professional and of the Owner shall not be affected by strikes, picketing, boycotts, or other labor activities.

**11.21 Certificates and Documents Incorporated.** All certificates and documentation required by the provisions of this Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

**11.22 Invalid Clause or Provision.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

**11.23 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 thereof.

**11.24 Mergers, Dissolution, Successors, and Assigns.** The Design Professional agrees that during the term hereof it will maintain its existing 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,

- A. Assumes, is capable of, and agrees in writing to perform all of the obligations of the Design Professional hereunder;
- B. Qualifies to do business in the State of New Mexico, including providing a legal resident registered Design Professional of New Mexico as Project Design Professional; and
- C. The Owner approves the firm or individual Design Professional, or new Design Professional, if any, who is to proceed.

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.

11.24.1 The Owner shall have sole discretion to determine whether or not the Project Design Professional or the firm named as Design Professional in this Agreement shall continue to have all contract rights under this Agreement and continue to represent the Owner under this Agreement in all instances where the Project Design Professional ceases to be associated with the firm named in this Agreement.

**11.25 Entire Agreement.** This Agreement 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.

11.26 **Interchangeable Terms.** For purposes of all provisions within this Agreement and all attachments hereto, the terms "Agreement" and "Contract" shall have the same meaning and shall be interchangeable.

11.27 **Words and Phrases.** Words, phrases, and abbreviations that have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.

11.27.1 Unless expressly provided otherwise, terms in this Agreement shall have the same meaning as those in the Conditions of the Contract for Construction, as provided in Exhibit G.

11.28 **Relationship of Contract Documents.** The Contract Documents are complementary, and any requirement of one contract document shall be as binding as if required by all.

11.29 **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 in this Agreement, as well as those listed in Subparagraph 11.30 below, 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.

11.30 The following exhibits are attached to and made a part of this Agreement:

- Exhibit A** - Time Schedule for Project Phases
- Exhibit B** - Design Professional's Errors and Omissions Insurance Certificate
- Exhibit C** - List of Consultants and Consultants' Agreements
- Exhibit D** - Green Building Standards
- Exhibit E** - Design Professional Additional Services Proposal/Amendment Form
- Exhibit F** - Design Professional Pay Request Form
- Exhibit G** - Boilerplate Bidding Documents and Conditions of the Contract for Construction

11.31 **Design Professional Performance Evaluation.** The Design Professional and its Consultant(s) acknowledge that the Owner will evaluate their performance under and pursuant to this Agreement. The purpose of such evaluations includes, but is not limited to, determining whether or not the Design Professional and its Consultant(s) responsibly performed their contractual obligations and whether or not the best interests of the state were promoted thereby. The Owner will provide a copy of any such performance evaluations to the Design Professional upon request, as soon as practicable after completion of the evaluation. The Design Professional or its Consultant(s) may respond to results of their performance evaluations by submitting a written request for review with the PCD Project Manager to attempt to reach mutual understanding. Any such request must include the reasons for the request, and documentation necessary to substantiate their claims that the initial performance evaluations were inappropriate or otherwise in error. Concerns not settled are to be presented in writing to the PCD Staff Architect for review, who will notify the respondent(s) of the results of the review as soon as practicable. The Owner reserves the right to waive the results of performance evaluations if, in the opinion of the Owner, corrective action has been taken to remediate substandard performance, events beyond the control of the Design Professional or its Consultant(s) resulted in substandard performance, or the best interests of the state will be served.

11.32 **Notices.** All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid - in the instance of notice of termination of work also by certified mail. Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which

notices shall be mailed to either party may be changed by written notice given by such party to the other as provided on the first page of Part A of this Agreement.

11.33 **Authority.** If Design Professional is other than a natural person, the individual(s) signing this Agreement on behalf of Design Professional represent and warrant that he or she has the power and authority to bind Design Professional, and that no further action, resolution, or approval from Design Professional is necessary to enter into a binding contract.

## **END OF ARTICLE 11**

## **ARTICLE 12**

### **MAINTENANCE**

12.1 Ease of maintenance and the ability to repair major items of installed equipment by replacement are essential to the Project. To ensure that these services can be adequately performed after the Project is accepted by the Owner, the Design Professional shall:

12.1.1 In all relevant Contract Documents, design and provide for all major installed equipment in the Project, including but not limited to removal, access, maintenance, and storage space needs. In addition, all installed equipment systems shall be appropriately identified and labeled to describe the capacities, flows, and other pertinent information related to their maintenance and safe operation;

12.1.2 Specify only equipment that can be readily maintained by the User or other qualified commercial repairmen who are proximate to the location of the Project;

12.1.3 Provide Construction Documents that accurately depict the installation of all major items of installed equipment and which provide reasonable detail on all other major systems to be installed; and

12.1.4 At the completion of the Schematic, Design Development, and Construction Documents Phases, brief the Owner and the User Representative on the rationale for the selection of the major mechanical and electrical systems to be specified in the Contract Documents, together with their probable life-cycle costs.

## **END OF ARTICLE 12**

## ARTICLE 13

### BASIS OF COMPENSATION

13.0 The fee for basic services generally is based on a percentage of the MACC adjusted by building type and design complexity, and Scope of Services. The fee for the project is prescribed in Compensation and Schedule (Part A of Agreement). The MACC, for the purpose of calculating the fee for basic services, is not adjusted at the time of construction contract award. If at any time the MACC and/or the percentage is changed by amendment to the Agreement, the basic services fee shall be adjusted as appropriate. No fee adjustment shall be made for phases already completed.

13.1 The Owner shall compensate the Design Professional for the Scope of Services provided in accordance with Article 7, Payments to the Design Professional, and other Terms and Conditions of this Agreement.

13.2 Payments for basic services, as described in Article 2, Subparagraphs 2.0 through 2.7, and any other services included in Other Conditions or Services (Part A of Agreement) as part of Basic Services, shall be made monthly in proportion to services performed so that the compensation at the completion of each phase shall be as provided by this Agreement.

13.2 Payments for project representation beyond basic services, as described in Subparagraph 2.8, compensation shall be computed separately in accordance with Subparagraph 2.8.2.

### 13.3 COMPENSATION FOR ADDITIONAL SERVICES

13.3.1 Payments for additional services of the design professional, as described in Subparagraph 2.9, and any other services included in Other Conditions or Services (Part A of Agreement) as part of Additional Services, but excluding additional services of consultants, compensation shall be a negotiated lump sum.

13.3.2 Payments for additional services of consultants, including but not limited to the additional structural, civil, landscape, interior design, mechanical, and electrical services, shall be computed by applying a multiple not to exceed of 1.10 times the amounts billed to the Design Professional for such services. The Design Professional shall provide to the Owner for approval, hourly rates for consultants and their employees detailed by professional levels prior to incurring any liability for Additional Services. GRT will be added as a separate item in the pay request.

**13.4 REIMBURSABLE EXPENSES**, if allowed by this Agreement, shall be compensated at direct cost not to exceed the reimbursable amount as defined in Part A of this Agreement, unless modified otherwise by written amendment.

### END OF ARTICLE 13

## ARTICLE 14

### DECLARATIONS AND CERTIFICATIONS

#### 14.1 For New Mexico Employees Health Coverage

A. If Design Professional has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Design Professional certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Design Professional and the State exceed \$250,000 dollars.

B. Design Professional agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Design Professional agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

**14.2 Employee Pay Equity Reporting.** Design Professional agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form within thirty (30) days of contract award. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Design Professional also agrees to complete and submit the required form (PE10-249 or PE250, depending on their size at the time) within thirty (30) days of the annual contract anniversary date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, which ever comes first. Should Design Professional not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Design Professional agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Design Professional also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Design Professional further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Design Professional will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Design Professional shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Design Professional acknowledges that this subcontractor reporting requirement applies even though offeror itself may not meet the size requirement for reporting and be required to report itself.

**END OF ARTICLE 14**