

STATE OF NEW MEXICO
PUBLIC SCHOOL FACILITIES AUTHORITY
PUBLIC SCHOOLS CAPITAL OUTLAY COUNCIL

General Conditions of the Agreement between
the Owner and the Design Professional
2010 Edition, Version 3.1, Part B of the Agreement

THESE GENERAL CONDITIONS MAY BE TAILORED ONLY BY PERMISSION FROM PSFA 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 ADEQUACY PLANNING GUIDE: The companion document to the Public School Capital Outlay Council Statewide Adequacy Standards (6.27.30 NMAC) provided by the state of New Mexico for use in the programming and design of new projects to meet adequacy (document available at www.nmpsfa.org).

1.2 APPROVAL OF SCHOOL CONSTRUCTION: Any K-12 school project required by the NM Construction Industries Division (CID) to be permitted shall, prior to advertisement to bid or purchase of the project, be first authorized by an Public School Facilities Authority (PSFA) Approval of School Construction (ASC) per Section 22-20-1 NMSA 1978.

1.3 BIDDING: The solicitation process to procure an offer to enter into contract for Work within the procurement rules of the Central Purchasing Office and in accordance with the Contract Documents and this agreement. (see Paragraphs 2.4.5 and 2.5).

1.4 CENTRAL PURCHASING OFFICE: The Central Purchasing Office is the School District's Central Purchasing Office.

1.5 CODES: Federal and state health or safety laws, codes, standards and regulations applicable to the locale where the project is located. The Building Code shall be the current New Mexico Building Code and the Fire Code shall be the current New Mexico Fire Code. If there is a conflict between the Building Code and the Fire Code, the Building Code shall always prevail. Local codes shall not be more restrictive than State adopted codes on any K-12 public school project.

1.6 CONSTRUCTION DOCUMENTS: Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Bid Forms, Agreement Forms, Wage Rates and Addenda issued prior to execution of the Construction Contract and all required documents for the public advertisement, bidding, selection, award, construction and administration of the Construction Documents for the Project must be in conformance with the New Mexico Procurement Code.

1.7 DAY: The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

1.8 DESIGN DEVELOPMENT DOCUMENTS: Design Development (DD) documents finalize and describe the size and character of the entire project. A PSFA-ASC DD submittal should be approximately 60% complete project manuals and plan documents with elements such as civil, structural, mechanical and electrical systems, roofs, walls, floors fully developed and lacking only specific installation details required to construct. Submittal should specify equipment to be installed, furnishings required and such other elements as may be appropriate. The DD submittal shall be accompanied by a statement of probable cost, a probable construction schedule, as well as, any recommended program modifications.

1.9 DESIGN PROFESSIONAL: Is the legal entity qualified to do business in State of New Mexico that employs an individual or individuals licensed to practice the discipline or disciplines for the services to be performed under this agreement.

1.10 DESIGN PROFESSIONAL PROJECT REPRESENTATIVE: The individual shall be the Project Design Professional or shall be assigned by the Project Design Professional to provide on-site project administration as required for the Project. The Design Professional Project Representative shall be mutually agreed upon by Owner and Design Professional prior to the Bidding Phase of this Project and shall be authorized to make binding decisions, as if made by the Design Professional, as they relate to the carrying out of this agreement and the successful completion of the Project.

1.11 DIRECT SALARY: Gross wage paid excluding employee benefits or employer burden.

1.12 EDUCATIONAL SPECIFICATIONS: Provided by the Owner, Educational Specifications list the characteristics of a school facility on a space-by-space basis. They define the curriculum for the specific school and define facility attributes that will support and enhance the instructional programs. They describe the programmatic, functional, spatial, and environmental requirements of the educational facility, and what site attributes are desired. Whether the anticipated project is new or remodeled; the Educational Specifications shall be in written and graphic form for review, clarification, and define the scope of work and design requirements. The Educational Specifications, with the knowledge and experience of the Design Professional, will be interpreted and validated in preparing the Program Statement. The New Mexico Public School Adequacy Planning Guide incorporating the New Mexico Statewide Adequacy Standards available at www.nmpsfa.org shall be used as reference. The educational specifications consist of the following components:

1. **Educational program and delivery system description:** A detailed description of instructional and learning strategies for the specific school, including scheduling approach (periods, block schedule, etc.) and proposed general organization of curricular areas.
2. **Specific program area information:** A statement of total student numbers within the facility with a description of how they are to be organized into grade levels, groups, academies, etc. The activities within, and the relationship between spaces shall be defined along with recommended quantities and sizes of spaces. All student space, faculty space, and community space shall be defined and a capacity and utilization study for each space shall be provided which clearly indicates the anticipated efficiency of facility use.
3. **Specific facility features:** A complete description of all issues, special considerations, and special curricular and extracurricular activities to be accommodated by the facility. This shall include subject matter such as safety, security, sustainability, flexibility, community use, utilities, and any others that are to be included within the program. A calendar of events for the current or, if appropriate, a comparable local facility shall be included to support identification of space required to meet programmatic needs.
4. **Enrollment information:** The current year and five-year post-occupancy projection of attendance area enrollments in the grade levels affected by the facility.
5. **Furnishings and equipment needs:** A general description of required furnishings and built-in equipment needed for each space.
6. **Budgetary information:** An initial recommended total cost for the total project shall be included with subtotals that indicate separately site development and construction costs. An anticipated project schedule shall be provided.

1.13 ENERGY STAR: is a voluntary program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy that identifies energy-efficient products and buildings. Qualified products and

buildings exceed minimum federal standards for energy consumption by a certain amount. Qualifying buildings which achieve an ENERGY STAR rating of 75 or above are eligible to receive the ENERGY STAR label. Web site: <http://www.energystar.gov/>. Compliance with ENERGY STAR is required on certain projects by Section 15-3-36, Energy Efficiency Standards for Public Buildings, NMSA 1978.

1.14 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION: The General Conditions of the Contract for Construction of the Construction Contract as provided as a part of Exhibit G hereto.

1.15 HVAC & CONTROLS PERFORMANCE ASSURANCE PROGRAM: A program integrated into all phases of the Project with an Owner-provided contractor, for assurance and documented verification that HVAC and control systems for a school facility meet PSFA standards for acceptability, are installed and operating properly, and fulfill the functional and performance requirements of the design intent (document available at www.nmpsfa.org).

1.16 MACC: Maximum Allowable Construction Cost is the total sum excluding gross receipts tax, available for construction purposes and may include furnishings, fixtures and equipment. MACC shall not include professional fees, testing fees, project contingency funds, acquisition costs or other soft costs in accordance with Articles 5.

1.17 MATERIALS: Materials and systems specified in the Construction Documents available at the time of this Agreement, or reasonably believed to be available prior to the Bidding Phase.

1.18 OWNER: Owner is the person or entity identified as such in the Agreement and is referred to throughout the Construction Documents as if singular in number. The Owner shall designate in writing the representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. If project includes any state funding, the Design Professional shall interpret the Owner referred to throughout this Agreement and the Construction Documents to be both the School District and the Public School Facilities Authority (PSFA) as if singular in number.

1.19 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.

1.20 PROJECT DESIGN PROFESSIONAL: The individual Architect or Engineer registered in the State of New Mexico who shall sign and affix a New Mexico Design Professional's Seal to all plans, designs, drawings, specifications, and reports required for the Project. The Project Design Professional shall be mutually agreed upon by Owner and Design Professional at the time this Agreement is entered into and shall be named herein.

1.20 PROGRAM STATEMENT: The Program Statement shall be an abbreviated document that shall demonstrate support of the district provided Educational Specifications, facility space requirements, the overall project budget and MACC. The Program Statement shall clearly include:

1. established goals, facts, regulations, conditions and concepts that bound the Project and clearly state and describe such information, as how the project serves the needs of the school(s) and district including number of students to be served, number of classrooms spaces, support spaces, utilization of spaces, infrastructure requirements, and so on, and;
2. report in tabular form -- the count, type, design occupancy, utilization and square feet of each project space; total square feet of the entire project including tare; square footage of tare and its percentage of entire project square footage, and;
3. a project description that includes; site features, improvements, utilities development; utilities

- capacity; and off-site infrastructure requirements, and,
4. general descriptions that, along with all other requirements of this paragraph, adequately describe the project to ensure the Design Professional and Owner have a mutual understanding as to project scope and budget.

1.21 PSFA LIBRARY DOCUMENTS: Document set provided to PSFA within 30 days of start of construction for inclusion into the on-line PSFA School Facilities Reference Library. Documents shall include: each document in .pdf format, clearly defining the Design Professional firm name, the name of the district, and name of the school; floor plan(s) with room use labeled on each space, elevations, facsimile of the tabular report included in program phase submittal and defined in Subparagraph 1.20.2; and, the Design Professional's description of the project explaining the features and benefits of the project and any other information, such as, special challenges that were overcome by the design.

1.22 REIMBURSABLE EXPENSES: Expenses in addition to the basic services compensation that include actual expenditures made by the Design Professional or its employees in the interest of the Project pursuant to this Agreement and limited in accordance with Article 6, Article 9 and as otherwise authorized in writing by the Owner.

1.23 REQUEST FOR APPROVAL OF SCHOOL CONSTRUCTION: PSFA Request for Approval of School Construction (RASC) is a phased construction documents approval process with each phase required to be approved prior to proceeding to next appropriate design phase and finally PSFA Approval of School Construction (ASC), see Paragraph 1.2, required prior to the Central Purchasing Office advertisement to bid or purchase of the project.

1.24 ROOFING CONSULTANT: The Owner's separate consultant providing design review and / or field observation services on the Project scope of work involving roofing.

1.25 ROOFING HANDBOOK: The State of New Mexico Public School Facilities Authority Roofing Handbook is a PSFA guide document for the Design Professional to follow on projects which involve roofing work (document available at www.nmpsfa.org).

1.26 SCHEMATIC DESIGN DOCUMENTS: The Schematic Design Documents submittal should include preliminary schematic drawings and a preliminary project description (PPD) that together clearly indicate the extent and relationship of the project components. A PPD shall include life cycle costing for HVAC and controls to help the Owner and the Design Professional understand the various components and systems proposed for the project. It shall also serve as an early basis for discussion of the overall building and site systems including site drainage and other geotechnical considerations.

1.27 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.

1.28 PERFORMANCE ASSURANCE CONTRACTOR (PAC): The Owner's separate contractor providing HVAC and controls testing, adjusting, and balancing for the Project, in accordance with the HVAC & Controls Performance Assurance Program.

1.29 USER REPRESENTATIVE: The School District staff or individuals that may be designated by the owner to represent the needs of facility and students or for which the project is being designed.

1.30 UTILIZATION ANALYSIS: Calculations performed to determine the efficiency and flexibility of use of the whole facility design in consideration of the entire educational program, scheduling, and available classroom space, and meeting the detailed requirements of the Request for Approval of School Construction (RASC).

1.31 OWNER REPRESENTATIVE: The individual who is an employee of the school district, named in this Agreement, otherwise known as the District Representative, with the authority to bind the Owner with respect to this Agreement in accordance with Article 3.

1.32 OTHER DEFINITIONS: Words or combination of words, if not defined herein shall be defined in the following order of precedence: (1), Definitions, of the General Conditions of the Contract for Construction; (2), within the context they are used; (3), as to well-known technical or construction industry meaning if used in accordance with such recognized meanings; (4), by the Webster's Collegiate Dictionary.

ARTICLE 2

DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES

2.0 BASIC SERVICES

2.0.1 General. The Design Professional's basic services shall consist of the following and as identified in Paragraphs 2.1 through 2.6 :

1. Programming Phase
2. Schematic Design Phase
3. Design Development Phase
4. Construction Documents Phase
5. Bidding Phase
6. Construction Phase
7. PSFA Library Document Submittal
8. Record Drawings
9. Correction Period 11-month Inspection

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 Basic services do not include educational specifications, extensive civil engineering, or geotechnical engineering, sound engineering, landscape architecture or interior design for FF&E (furniture, fixtures and equipment) unless included in Other Conditions or Services (Part A of Agreement).

2.0.2 Formatting Protocol. Early planning organization of design work and all Project cost estimates are to follow Construction Specifications Institute (CSI) UniFormat™ convention. Project Manual is to follow CSI MasterFormat™ convention. Plan documents are to follow U.S. National CAD Standard (NCS) convention. All documents that are a part of this Project are to be archival able in electronic format in accordance with Paragraphs 9.1 and 11.23.

2.0.3 Adequacy Planning Guide and Utilization Analysis. The current edition of the New Mexico Public School Adequacy Planning Guide shall be used in its entirety. Utilization analysis shall be performed by the Design Professional to demonstrate that the basic planning concepts of the Project conform to maximum requirements for flexible and efficient use of each space.

2.0.4 Owner's Standard Documents and Guide Specifications. The Design Professional shall use the Owner's standard Division 00 and Division 01 documents and guide specifications in developing the procurement requirements, including the Contract Documents for the Project. Such materials shall be modified as appropriate for the specific Project by the Design Professional and submitted for review by Owner prior to issue. Current versions of PSFA standard Division 00 and Division 01 are available on the web at www.nmpsfa.org.

2.0.5 Furnishings and Equipment. If the Owner has optionally added this work as an additional provision to Other Conditions or Services (Part A of Agreement), the Design Professional shall provide all required work for design, selection, preparation of Construction Documents and bidding for the procurement of project related furniture, fixtures, and equipment. Related services shall be performed in accordance with the same requirements contained in these General Conditions for review and approval by Owner as indicated for Basic Services unless modified in writing by Owner. 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.

2.0.6 Project Budget. The Design Professional shall request from the Owner an accounting of funds available or anticipated for construction of the envisioned project that may include furniture, fixtures and equipment and other requirements to fully complete, occupy, operate and maintain the facility. The Owner, in collaboration with the Design Professional, will establish an overall project budget for utilization by the Design Professional in the performance of services. Should the Design Professional conclude, at any time, that the MACC and the Scope of the Work to be accomplished are incompatible; including district vs. state funding in accordance with the Statewide Adequacy Standards and district match requirements, the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.0.7 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 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.

2.0.8 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, an Additional Service or a reimbursable expense.

2.0.9 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. Any necessary surveys shall be Owner-provided.

2.0.10 Qualifications, Standard of Care and Coordination. The Design Professional affirms that its employees and consulting professionals shall possess the experience, knowledge, and character necessary to qualify them individually for the services to be performed by them under this Agreement. All services shall be performed in accordance with the standards of their respective profession.

The Design Professional affirms that there shall be adequate participation, coordination and cooperation, by Design Professional and all consulting professionals, in the development of the Construction Documents so that the components of the Project are coordinated:

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

2.0.11 Interdisciplinary Coordination Meetings. The Design Professional shall, as a process in the provision of Basic Services in accordance with Subparagraph 2.0.10, hold Interdisciplinary Coordination Meetings and require attendance of appropriate consulting professionals, at suitable times during the development of the Construction Documents.

2.0.12 Owner HVAC & Controls Performance Assurance Program: The Design Professional shall incorporate the elements and requirements of the HVAC & Controls Performance Assurance Program into all phases of the project. The Design Professional shall responsibly participate in the program and coordinate with the Owner-provided Performance Assurance Contractor (PAC) as required during all stages of the Project. The PAC will submit various reports to the Design Professional after reviewing the HVAC & Controls design at all required phases of the Project. The Design Professional shall then review each PAC report and issue a response to the PAC and Owner indicating action(s) to be taken in response to the PAC comments, in written form no later than **14 days** after receipt of each report.

2.0.13 Roofing Consultant: The Design Professional shall responsibly cooperate and coordinate with the Owner-provided Roofing Consultant during all stages of the Project which involve roof consultation and/or observation services. The State of New Mexico Public School Facilities Authority Roofing Program Handbook shall be followed by the Design Professional on the Project, if roofing is involved.

2.0.14 Coordination with Other Owner's Contractors. The Design Professional shall participate with other separate contractors, the Owner's own forces and consultants, and the Owner in reviewing and coordinating their work when directed to do so. The Design Professional shall make any revisions to the schedule deemed necessary after a joint review with the Owner and mutual agreement as a process in the provision of Basic Services. If the Design Professional deems that such coordination justifies Additional Services, the Design Professional shall promptly submit a request for Additional Services, in writing, prior to proceeding with the Work. The Owner shall then give due consideration to the Design Professional's request and if it is mutually agreed, Additional Services will be authorized.

2.0.15 Design Phase Reviews. Unless waived by PSFA, the following design phases shall be submitted to and approved by PSFA, as part of the Approval of School Construction (ASC) process (see Paragraph 1.23), prior to proceeding to next appropriate phase; Program Statement, Schematic Design, Design Development (two sets for each of these phases) and final or Construction Documents (three sets). Each design phase PSFA-ASC submittal application shall be approved and signed by the district's representative prior to submission to PSFA. If PSCOC funds are a part of project budget, then the PSFA regional manager approval and signature will also be required.

2.0.15.1 Plan reviews by other authorities having jurisdiction state agencies listed in this Subparagraph will be coordinated by PSFA as part of each PSFA-ASC submission. The PSFA will determine which reviews should occur, route them to the correct entity and then return all approvals or rejections with required actions back to the district or to the Design Professional as the Owner’s agent to be included in the next design phase submission. The expected turn around time for each phase, excluding Construction Documents review, shall be **14 days** (excluding intervening holidays). The Construction Document review, otherwise known as bidding and permit review, is estimated to be 21 days. The authorities having jurisdiction reviews covered under PSFA ASC submissions are:

1. Construction Industries Division, Regulation and Licensing Department (CID)
2. State Fire Marshal’s Office (SFMO);
3. Energy, Minerals, and Natural Resources Department (ENMRD);
4. Public Education Department (PED);
5. Occupational Health and Safety Bureau, Environment Department; and
6. Food Quality Section, Environment Department.

2.0.16 Final Design Review, Bidding, and Permitting. Any K-12 school project required by the NM Construction Industries Division (CID) to be permitted must first be authorized by a Public School Facilities Authority (PSFA) Approval of School Construction (ASC) prior to advertising for bid, letting of contracts or purchase orders. The PSFA will, as a function of the Construction Documents review, coordinate its final review with Construction Industries Department (CID) permit review. Upon joint PSFA and CID approval, the PSFA will issue a PSFA-ASC to the district, or Design Professional as owner agent, along with three (3) sets of permit ready documents. An appropriately licensed contractor for Project will submit the two permit ready documents along with building permit application, appropriate permit fee and a copy of the PSFA-ASC and a Building Permit will be immediately issued without further review.

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

2.1 PROGRAMMING PHASE

2.1.1 The Owner shall schedule a meeting between the Design Professional and the User Representative to review the roles and relationships among all parties.

2.1.2 A Project Program Statement shall be provided by the Design Professional in accordance with Paragraph 1.20, and developed with the Design Professional’s knowledge and experience coupled with the Owner’s Educational Specifications, Educational Programming Statement, the District Facility Master Plan, and other information provided by the Owner and the User Representative to the Design Professional. , The purpose of the Program Statement shall also fulfill the requirements of the PSFA Approval of School Construction (RASC) for this phase and ensure that the Design Professional and Owner have a mutual understanding of the project’s goals and constraints including budget.

2.1.2.1 The Project Program Statement shall include a utilization study in accordance with Paragraph 1.28, which projects the anticipated efficiency and of use for each new and existing classroom and support space in the context of the entire school facility utilization. Utilization benchmarks shall be as established by the PSFA guidelines.

2.1.2.2 Lengthy research and analysis of historical information, demographics, NM Public Education Department requirements, development of drawings or documents, defining existing structures, or similar, shall not be the responsibility of the Design Professional under this agreement, unless specifically modified

to include as an Additional Service or a reimbursable expense.

2.1.3 The Design Professional shall transmit the Project Program Statement to the Owner, along with written confirmation that the Design Professional has visited the site, become familiar with the local conditions, has correlated observations with current code requirements and life safety needs, and has a clear understanding of observable existing conditions for the Project. Should the Design Professional conclude that the MACC and the Scope of the Work to be accomplished are incompatible, proposed recommendations to reconcile the incompatibility shall be included for consideration by the Owner.

2.1.4 The Design Professional shall obtain the written approval of the User Representative and the Owner of the Project Program Statement. Following Owner approval, the Owner shall consider the Project Program Statement ready for submission to PSFA for ASC review before commencing work on the Schematic Design Phase.

2.1.5 **ENERGY STAR:** If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall coordinate with the Owner in developing an integrated design approach to establish an energy performance target that exceeds the ENERGY STAR rating of 75, generated from the U.S. EPA's Energy Performance Rating tool Target Finder, on the <http://www.energystar.gov/newbuildingdesign> web page. This approach shall be described as part of the Project Program Statement.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 From the approved Project Program Statement the Design Professional shall prepare Schematic Design documents that should include preliminary or schematic drawings in which the general scope, conceptual design, and the scale and relationship of components of a project are established and a Preliminary Project Description (PPD) and a Level 1 UniFormat™ probable cost estimate. Generally, the Schematic Design describes:

1. the merits of the design solution(s) as it applies to the Project Program;
2. conceptual site considerations including geotechnical, location, utilities, and drainage including identification of off-site issues;
3. approximate locations of programmed areas;
4. refine dimensions, areas and volumes of programmed areas and tare;
5. establish types of materials envisioned;
6. the general planning and functional concepts of probable architectural, structural, mechanical and electrical systems;
7. conceptual building plans including preliminary elevations, floor plans and sections;
8. physical function(s) in accordance with Paragraph 12.1;
9. if roofing is contemplated, the Roofing Consultant, and the basis of design including materials;
10. if new HVAC system is contemplated, basis of design in compliance with the PSFA HVAC and Controls Performance Assurance Program including the Narrative with Life Cycle Cost Analysis (LCCA) of proposed system in accordance with Subparagraph 2.0.12;
11. if required by Other Conditions or Services (Part A of Agreement), or as an Additional Service, a feasibility report on the use of energy sources other than fossil fuels for the heating and air conditioning; and,
12. if required by Other Conditions or Services (Part A of Agreement), or as an Additional Service, the Design shall include considerations of probable life cycle costs and modeling of anticipated performance of other project components;
13. **ENERGY STAR Strategies and Methodologies:** If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall further develop initial design strategies and methodologies to meet the ENERGY STAR criteria for the Project. Energy performance shall be targeted using U.S. EPA's Target Finder.

The Design Professional shall brief the Owner and User Representative on the Schematic Design that includes the requirements of this Paragraph 2.2.

2.2.2 The Design Professional shall prepare study model(s) if appropriate, in the opinion of the Design Professional.

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

2.2.4 The Owner and User Representative shall work with the Design Professional to ensure that information required for clear definition of project requirements is made available to the Design Professional in the form of written memoranda. The Design Professional shall request from the User Representative information sufficient to develop program criteria including the User's goals, objectives, functions and needs, as well as, an organizational chart of individuals that shall occupy the Project, list of equipment (other than incidental 110 volt, 60HZ devices, requiring less than 10 amps) that require utility services, required infrastructure and connections of equipment such as telecommunication and data. To the extent practicable and reasonable, the Design Professional shall incorporate the User Representative's requests into the documents for construction. The Design Professional shall advise the Owner, in writing, of any information required that has not been provided by the Owner or the User Representative, or any conflicts between the established program requirements, and the MACC. The Design Professional is solely responsible to the Owner, and not the User Representative, for the types of material incorporated into the construction, the size of the facilities constructed, and to design within the MACC.

2.2.5 Following corrections or revisions required by the Owner, the Design Professional shall obtain the written approval of the Owner and User Representative of the Schematic Design and documents before commencing work on the Design Development Phase.

2.2.6 Following Owner approval, the Owner shall consider the Schematic Design Documents ready for submission to PSFA for ASC review before commencing work on the Design Development Phase.

2.2.7 The responsibility for bringing the Project within the MACC remains with the Design Professional. Should the Design Professional at any time conclude that the MACC and the Scope of the Work to be accomplished are incompatible; the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.3 DESIGN DEVELOPMENT PHASE

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

2.3.2 The Design Professional shall submit to the Owner for review and written approval the Design Development Documents and a refined Level 2 UniFormat™ probable cost estimate. Should the Design Professional conclude, at any time, that the MACC and the Scope of the Work to be accomplished are incompatible; including district vs. state funding in accordance with the Statewide Adequacy Standards and district match requirements, the Owner shall be notified immediately in writing, with proposed recommendations to reconcile the incompatibility.

2.3.3 Following corrections or revisions required by the Owner, the Design Professional shall acquire the approval, in writing, of the Owner and User Representative of all documents associated with the Design Development Phase before commencing work on the Construction Documents Phase.

2.3.4 Following Owner approval, the Owner shall consider the Design Development Documents ready for

submission to PSFA for ASC review before commencing work on the Construction Documents Phase.

2.3.5 ENERGY STAR: If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, the Design Professional shall further develop original design strategies and methodologies. Projected energy performance shall be adjusted and evaluated using U.S. EPA's Target Finder. Submit updated report to Owner as part of the Design Development Documents submittal.

2.4 CONSTRUCTION DOCUMENTS

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 and setting forth in detail the requirements for the construction of the entire Project.

2.4.2 Construction Documents shall include written and graphic elements indicating contracting requirements, specifications and contract drawings. If Contractor(s) is to provide professional design services, layouts of equipment or certifications related to systems, materials or equipment that are not included in this 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 Construction Documents are expected to include coordinated information as necessary to describe the anticipated performance, such as, but not limited to:

1. site grading, emergency access, utility locations and the like;
2. all building components and systems;
3. layout, locating or dimensioning of equipment, components, devices, diffusers and the like;
4. schematics, definitions and capacities of controls, operating logic, sequencing, piping, circuitry, ducting and the like;
5. details, schedules and specifications of all of the above; and,
6. roof slopes, flashings, dissimilar material transitions and the like.

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

2.4.5 Construction Documents shall include the Project Manual containing the project specifications and shall also include at a minimum bid forms, wage determination (if required), General Conditions of the Contract for Construction, Project Requirements and the Owner and Contractor Agreement. The Project Manual shall also include as a part of Division 1, and in accordance with Subparagraph 2.0.4, a Required Submittals List, indexed by MasterFormat™ divisions identical to indexing of items (or categories of items) of work within the specifications for which shop drawings or other submittals will be required. The Required Submittals List shall indicate the submittal items that must be submitted together as a package for the Design Professional's efficient review of like or interrelated items to be compared or correlated one to another. Original of the Required Submittals List shall be loaded by the Design Professional into the PSFA Construction Information Management System (PSFACIMS) prior to bid.

2.4.6 Upon completion of the Construction Documents, the Design Professional shall brief the Owner and User Representative on the Bidding Documents, specifically addressing previous Owner concerns and requirements. The Design Professional shall, at this briefing, furnish to the Owner a final and detailed Level 3 UniFormat™ probable cost estimate, including district vs. state funding in accordance with the Statewide Adequacy Standards and district match requirements. If Design Professional elects for out-of-house cost estimating expertise, any fees incurred in the preparation of the cost estimate(s) shall be paid by the Design Professional.

2.4.7 The responsibility for bringing the Project within the Maximum Allowable Construction Cost (MACC) is the Design Professional's in accordance with 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. The Design Professional shall obtain written approval of the Owner and User Representative(s) of any proposed changes prior to proceeding with revisions to the in-progress Construction Documents.

2.4.8 Alternates should be additive unless there is a compelling reason otherwise.

2.4.9 The Design Professional shall return all original documents and drawings provided under 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 Bid Documents and Final Approvals. Before proceeding to the Bidding Phase, the Design Professional shall brief the Owner and User Representative on the Construction Documents in their entirety for completeness.

2.4.11 The Design Professional shall assist the Owner in filing the required documents for the approval of governmental and other authorities having jurisdiction over the Project not included in the PSFA-ASC review and approval process.

2.4.12 Following corrections or revisions required by the Owner, agencies and jurisdictions having authority, the Design Professional shall provide a signature approval block on or near the front sheet of the drawings for:

1. Owner and User (s);
2. Public School Facilities Authority;
3. other agencies (if any, and as appropriate, see Subparagraph 2.0.15, 2.0.15.1 and 2.0.16);
4. utility companies (as appropriate); and,

shall obtain the approval signatures.

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

2.4.14 ENERGY STAR: If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, then the Design Professional shall:

1. fully develop and document energy performance strategies and methodologies for the Project, and review progress and adjust strategies and systems to meet or exceed ENERGY STAR criteria for the design;
2. include within the final Specifications, and reference as necessary, a copy of the original "Statement of Energy Design Intent" generated from U.S. EPA's Target Finder, sealed by the Design Professional or his consulting mechanical engineer, showing evidence of the application to U.S. EPA, and that the energy design intent meets or exceeds ENERGY STAR standards; and,
3. apply for the "Designed to Earn the ENERGY STAR" graphic which shall be affixed in the title block of the final Drawings and other related Construction Documents for the Project.

2.5 BIDDING PHASE

2.5.1 The Design Professional shall assist the Owner in obtaining bids and in awarding and preparing contracts for construction. All costs related to legal notice and initial advertising of project to bid shall be the responsibility of the Owner.

2.5.2 An Invitation to Bid shall be prepared by the Design Professional as directed by Owner, and shall include the bid date, location and time. The Central Purchasing Office will advertise for this Project in conformance with the Procurement Code.

2.5.3 No solicitation or advertisement to bid may occur prior to attainment of PSFA Approval of School Construction for the Project.

2.5.4 The Design Professional shall assist the Owner with local advertisement and shall concurrently load digitally and read-only, in accordance with Paragraphs 9.1 and 11.23, project description to the PSFA public bid advertisement website and construction documents into the PSFA Construction Information and Management System (CIMS). PSFA will train and assist Design Professional as appropriate to fulfill the requirements of this Paragraph.

2.5.5 The Design Professional shall provide sets of Construction Documents as required by the Owner, sets as required by the reviewing agencies, and sets as appropriate and authorized by the Owner to Bidders, such as General Contractors (three (3) sets) , major subcontractors, major suppliers or other interested parties approved by the Owner (one (1) set). 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. The Design Professional shall charge a refundable plan deposit determined as sufficient by the Owner for each bid set except for those provided to plan rooms, reviewing agencies or others as Owner determines and shall keep an accounting of the deposits. Plan deposits shall be returned only to those returning Construction Documents in good condition.

2.5.6 The Design Professional shall clarify and answer any questions about the Construction Documents during the bidding process and shall issue Addenda as required, and as authorized by the Owner, to all Bidders no later than **four (4) days** prior to the date of the opening of Bids, except an Addendum withdrawing the Request for Bids or one that includes postponement of the date for receipt of Bids.

2.5.7 The Design Professional shall review all bids, proposals, alternates or substitutions, if any, with the Owner, and then submit written recommendations as to their acceptance or rejection.

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 shall continue through Certification of Final Completion. In addition, the Design Professional Project Representative shall conduct an inspection of the Work with the Owner eleven months following Substantial Completion for the purpose of generating list of items needing correction by the Contractor.

2.6.2 The Design Professional Project Representative will provide administration of the Contract as described in the Construction Documents, and will be a representative of the Owner:

1. during construction;
2. until final payment is due; and,
3. from time to time during the one-year period for correction of Work described in Article 12 of the General Conditions of the Contract for Construction.

2.6.3 The Design Professional Project Representative shall be a representative of the Owner during the Construction Phase and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded only through the Design Professional Project Representative. The Design Professional Project Representative shall have authority to act on behalf of the Owner only to the extent provided in the Construction Documents and any amendments thereto, unless otherwise modified in writing in accordance with other provisions of this Agreement.

2.6.3.1 The Design Professional is responsible for ensuring resolution by the appropriate parties, whether his consultant or the Contractor, of deficiencies identified and recorded in the PACs' Design Issues Log and Installation Issues Log. The PSFA's use of a PAC on any project does not relieve the Design Professional of responsibility for the design, engineering coordination and management of the construction project including site visits and observation reports associated with the Design Professional Contract.

2.6.4 The Design Professional Project Representative shall, consistent with the General Conditions of the Contract for Construction, has authority to reject work that does not conform to the Construction Documents. Where rejected Work is not promptly corrected, the Design Professional Project Representative may, if appropriate, recommend to the Owner that the Work shall stop. Whenever, in the Design Professional Project Representative's professional opinion, it is necessary or advisable for the implementation of the intent of the Construction Documents, the Design Professional Project Representative, with prior approval of the Owner, will have authority to require special inspection or testing of the Work in accordance with the provisions of the Construction Documents, whether or not such Work be then fabricated, installed, or completed.

2.6.5 The Design Professional Project Representative shall render written decisions, in accordance with the General Conditions of the Contract for Construction, on all claims, disputes, and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Construction Documents in accordance with the General Conditions of the Contract for Construction.

2.6.6 The Design Professional Project Representative's decisions on matters relating to aesthetic effect will, with the Owner's consent, be final.

2.6.7 Interpretations and decisions of the Design Professional Project Representative shall be consistent with the requirements and intent of the Construction Documents and shall be in written or graphic form.

2.6.8 The Design Professional Project Representative shall review and verify the accuracy of Contractor provided Punch Lists or other such information or representation required by the General Conditions of the Contract for Construction or otherwise required for the successful completion of the Project.

2.6.9 Communication required within this Paragraph 2.6, and to fulfill the Design Professional's administrative responsibilities within the General Conditions of the Contract for Construction shall utilize the PSFA CIMS to the greatest extent possible in accordance with Paragraph 11.21 and 11.22.

2.6.10 EVALUATION OF THE WORK, REPORTS AND PROGRESS MEETINGS

2.6.10.1 The Design Professional Project Representative shall submit to the Owner, for approval, a list of critical points, based upon the construction schedule furnished by the Contractor, when the Work should be evaluated for conformance with the Contract Documents. The Design Professional Project Representative shall make periodic visits to the site at such critical points and other times as appropriate during the progress of the Work for the purposes of notifying the Owner of the progress and condition of the Work and to use all reasonable efforts to guard the Owner against defects and deficiencies in the construction. The results of all critical point site visits shall be documented in field reports posted into the PSFA web based CIMS within **five (5) days** of each such site visit.

2.6.10.2 The Design Professional Project Representative shall visit the site at intervals appropriate to the state of the Contractor's operations for review and evaluation of Work progress. Generally, these regular site visits shall be at intervals of one week coinciding with the Contractor's regular site meetings and may also coincide with the critical evaluation points identified in accordance with Subparagraph 2.6.10.1. Site visit intervals may be less often than once a week as established by agreement with the Owner, but never less often than is prudent to adequately review progress of the Work.

2.6.10.3 Should the Design Professional Project Representative determine that any portion of the Work varies from the requirements of the Construction Documents; the Design Professional Project Representative shall immediately notify the Contractor and the Owner of the nature of the work requiring correction or modification.

2.6.10.4 Weekly, the Contractor shall host a job site progress meeting in accordance with Paragraph 3.10.3 of the General Conditions of the Contract for Construction . Meetings shall be open forum chaired by the Contractor and shall include any Subcontractors doing work or anticipating work in the near future, Owner, any entities the Owner would like to attend, including User Representative, Design Professional Project Representative and any Consultant(s) to the Design Professional as appropriate. The Contractor shall alert the Design Professional Project Representative as to which Consultants are requested to attend the next meeting and include that request in the meeting minutes. Phone or web conferencing may be used if effective in the opinion of the Owner.

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

2.6.10.6 ENERGY STAR: If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, then the Design Professional shall:

1. by Substantial Completion of the Project, open a Portfolio Manager account for the Owner and enter initial data for utility usage tracking required by ENERGY STAR.
2. establish that the Project qualifies for ENERGY STAR Building Certification within 14 months of reaching 95% occupancy by using Portfolio Manager to determine actual annual energy use;
3. complete the ENERGY STAR "Statement of Energy Performance" along with the required "Data Checklist" and apply the professional seal of the Design Professional or his consulting mechanical engineer to the original copy, showing that the energy performance meets or exceeds ENERGY STAR standards.

2.6.11 Modifications or Changes to the Work. Modification or Changes to the Work may be requested by any party through a Modification / Change Request (MCR). No Work that could reasonably be expected to alter the contract price or time or materially alter the Project outcome shall be undertaken until the Owner has authorized an MCR to proceed. The Owner reserves the right to seek reasonable remedy from the Design Professional for Modification or Changes to the Work or portions of Work made necessary due to the Design Professional's errors and omissions.

2.6.12 CERTIFICATE OF PAYMENTS

2.6.12.1 The Design Professional Project Representative shall within **five (5) days** after receipt of the Contractor's Application for Payment; either notify the Contractor of errors in the Application or, make recommendations to the Owner for payment of the amounts owing to the Contractor in the form of a Certificate for Payment that shall be subject to the Owner's approval.

2.6.12.2 The Certificate for Payment shall be based on observations at the site, evaluations of the Contractor's Applications for Payment, Contractor's Schedule, consultation with the Owner, and any other knowledge or information the Design Professional may have.

2.6.12.3 The Design Professional Project Representative shall either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Professional Project Representative determines is properly due, or notify the Contractor and Owner in writing of the Design Professional Project Representative's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1 of the General Conditions of the Contract for Construction.

2.6.12.4 The issuance of a Certificate for Payment will constitute a representation by the Design Professional to the Owner, based on the Design Professional Project Representative's evaluation of the Work and the data comprising the Application for Payment, that:

1. to the best of the Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Construction Documents subject to:
 - A. subsequent evaluation of the Work upon Substantial Completion;
 - B. subsequent evaluation of the Work upon Final Completion;
 - C. the results of any tests required by the Construction Documents or the Design Professional;
 - D. to minor deviations from the Construction Documents correctable prior to completion; and,
 - E. to any specific qualifications stated in the Certificate for Payment; and,
2. Contractor's As-built drawings have been reviewed by the Design Professional Project Representative and by the Design Professional's Consultants and found, to the best of the Design Professional's knowledge, information and belief, to accurately depict completed Work inclusive of, but not be limited to, actual locations and installed types, brand, model number and similar of all Work including ducts, pipes, conduit, equipment, walls and site utilities; and,
3. payment certified is in accordance with the conditions of Article 9 and other parts of the General Conditions of the Contract for Construction.

2.6.12.5 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.

2.6.12.6 Prior to the issuance of the Certificate for Payment that fully pays out the Schedule of Value line item for Close-Out; the Design Professional shall ensure that all requirements of Close-Out as defined in the General Conditions of the Contract for Construction have been delivered including completion of Record Drawings by Design Professional within **thirty (30) days** of Design Professionals' receipt and acceptance of As-Built's from the Contractor.

2.6.13 Submittals. The Design Professional shall within **fourteen (14) days**, or otherwise as agreed upon with Contractor, review and return to the Contractor 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 Construction Documents; and, for each submittal, the Design Professional shall designate in writing that the Design Professional:

1. takes no exception; or,
2. rejects and requires the Contractor to re-submit as specified; or,
3. requires corrections or revisions as noted and then re-submit; or,

4. approves as corrected; or,
5. is returning with no action to be included within submittal package required by the Construction Documents.

2.6.14 MILESTONES

2.6.14.1 Approvals. The Design Professional shall obtain, review, approve or take other action on Contractor submitted punch lists, operation and maintenance manuals, warranties and related documents required by the Construction Documents.

2.6.14.2 Substantial Completion Inspection and Recommendation. Upon request by the Contractor and within **ten (10) days** of receipt of Contractor's Punch List, Close-out Schedule, and request for Substantial Completion, the Design Professional Project Representative shall conduct project inspections to determine the Date(s) of Substantial Completion, review the Contractor's Punch List and Close-out Schedule including any deficiencies identified by the Owner's separate consultants and, following consultation with the Owner, shall issue a Certificate for Payment appropriate to the Work complete, or give written direction to Contractor of required Work to be completed, or required revisions to the Punch List or Schedule prior to issuance of Substantial Completion.

2.6.14.3 Close-Out Progress. The Design Professional shall periodically review Close-Out Schedule progress and advise Owner and Contractor on progress. The Design Professional may be allowed Additional Services for services provided beyond Basic Services if Contractor fails to achieve Close-Out Schedule, and at no fault of the Design Professional.

2.6.14.4 Close-Out. The Contractor shall complete all of the requirements of close-out in accordance with Subparagraph 9.10.1 of the General Conditions of the Contract for Construction and at completion of close-out; and prior to Final Completion, submit written notice to the Design Professional requesting the Close-Out Meeting. The Design Professional shall schedule such meeting within **five (5) days** of the request, or otherwise reply in writing to the Contractor why the request is premature. At the Close-Out Meeting, all requirements to achieve close-out will be verified, and if Work is found to be complete, the Design Professional, with concurrence from the Owner, shall provide written approval of Contractor's completion of close-out requirements within **five (5) days** of the conclusion of the meeting.

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

2.6.15 Authorized Work. The Design Professional agrees not to bind the Owner or the State of New Mexico to any obligation not assumed herein, unless the Design Professional has express written authority to do so, and then only within the strict limits of that authority. Should the Design Professional or Design Professional's staff, or Consultants direct Work to be undertaken for which additional compensation or liability could reasonably be expected, and if such work is not:

1. an emergency endangering life and property; or
 2. approved by Modification / Change Request or Change Order; then,
- payment for such work shall not be borne by the Owner and shall constitute adequate grounds for dismissal or other

action against the Design Professional.

2.6.16 PSFA Library Documents. The Design Professional shall provide to the PSFA in electronic form documents as defined in Paragraph 1.21.

2.6.17 Record Drawings. The Design Professional shall be responsible for converting Contractor provided As-Built Drawings into Record Drawings using information provided by the Contractor and by other knowledge the Design Professional may possess and endeavor to ensure their accuracy. The Design Professional shall, within **thirty (30) days** of Design Professionals' receipt and acceptance of As-Built's from the Contractor, provide:

1. one set of mylar Record Drawings clearly marked Record Drawings;
2. two sets of Record Drawing prints clearly marked Record Drawings;
3. two sets of Record Project Manuals clearly marked as such;
4. one electronic copy in .dwg format and one copy in .pdf format of Record Drawings with directory of contents submitted to Owner and uploaded by Design Professional into CIMS; and,
5. any required CD's or other electronic media to transmit Record documents –

2.6.18 Means and Methods. 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 Construction Documents.

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

2.7 PROJECT REPRESENTATION BEYOND BASIC SERVICES

2.7.1 If the Owner and the Design Professional agree that more extensive representation for inspection of the Project than that described in Subparagraph 2.6.10, the Design Professional shall, upon written authorization of the Owner, provide one or more Project Representatives to assist the Design Professional Project Representative in carrying out such responsibilities at the site.

2.7.2 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).

2.7.3 The Owner reserves the right to employ an independent entity for Peer Review Design Professional to provide value and cost services on the Project. If a peer review Design Professional is retained, an amendment to this Agreement will be required including, but not limited to, the duties and limits of authority of the Peer Review Design Professional. The Design Professional shall cooperate with the Peer Review Design Professional in the performance of the Peer Review Design Professional's duties.

2.8 ADDITIONAL SERVICES

Additional Services to those included in Basic Services may at the Owner's election, be provided upon written authorization by the Owner, and as offered by the Design Professional and included as Exhibit E attached herewith. Additional Services may include but, are not limited to:

1. financial feasibility of the project, any of the project's components or other special studies;
2. CAD documentation of existing facilities, 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;
3. providing services related to future facilities, systems, and equipment which are not intended to be constructed during the Construction Phase;
4. making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and due to causes beyond the control, or responsibility of the Design Professional;
Exception; Revisions necessary for Owner approval, compliance with state adopted codes, regulations or similar during Programming, Schematic Design, Design Development and Bid Documents or otherwise necessary to fulfill the intent of this Agreement, as well as, revisions necessary to bring the Project within the designated MACC, shall be considered Basic Services and not Additional Services;
5. drawings, specifications, or any other supporting information, direction or services necessary in connection with a MCR or Change Orders, provided that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not for work provided pursuant to Basic Services and provided that such modification or change to the Work is not due to errors or omissions of the Design Professional;
6. investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities when such work is not covered by this Agreement;
7. inordinate submittal re-reviews, exceeding two, due to Contractor's non-compliance with Subparagraph 4.2.7.1 of the General Conditions of the Contract for Construction;
8. exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's Work, or protracted completion of Close-Out;
9. excessive time and effort in completing list of incomplete and non-compliant Contractor Work not included in Contractor's Punch List or otherwise due to Contractor's neglect of responsibilities; and,
10. 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.
11. life cycle cost analysis beyond requirements of the PSFA HVAC and Controls Design Guidelines.
12. services involving separate procurement contracts related to the Project . NOTE: These shall be performed in accordance with the same requirements contained in these General Conditions for review and approval by Owner required for Basic Services unless modified in writing by Owner.

2.9 TIME

2.9.1 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.

2.9.2 The Design Professional agrees that services will be performed diligently and without interruption at such rate of progress in order to comply with achieving the bid date as scheduled (see Exhibit A, Time Schedule for Project Phases). It is expressly understood and agreed, by and between the Design Professional and the Owner, that Exhibit A is a reasonable schedule inclusive of required approval and advertising times. The schedule shall not be modified except for reasonable cause outside of the Design Professional's control and unless agreed upon by the Owner. The Design Professional shall notify the Owner in writing if the Design Professional feels the Owner is causing a delay, such as, timely provision of required information or approvals. Failure of the Design Professional to

perform within this schedule, except through authorized extensions, shall constitute a basis for termination or withholding of payment until schedule compliance is achieved by the Design Professional. If included in Part A, Other Conditions or Services, of this Agreement, and if the Design Professional neglects, fails or refuses to complete the Construction Documents by the scheduled bid date, or by any proper extension granted by the Owner, the Design Professional agrees to pay the Owner the amount stated in Part A for each late calendar day, not as penalty, but, as liquidated damages.

2.9.3 Time of Essence: All time limits stated in this Agreement are of the essence in the performance of this Agreement. The Design Professional will promptly inform the Owner in writing of any conditions beyond the control of the Design Professional that might adversely affect the Project.

2.9.4 Term: This Agreement shall terminate 48 months from approval unless terminated sooner in accordance with Article 10

ARTICLE 3

THE USER REPRESENTATIVE

3.1 The Owner shall designate a primary User Representative that shall represent all other user representatives..

3.2 The User Representative(s) and the Owner shall provide the Design Professional with information required under Paragraph 2.1 through 2.5 as well as additional information required by the Design Professional for the purpose of defining the Scope of the Project and to assist the Design Professional and the Owner in the development and completion of the Project.

3.3 The User Representative(s) shall meet as needed with the Design Professional and shall respond to all written inquiries submitted by the Design Professional within any time limits set forth in the inquiry.

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

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Owner shall designate in writing an Owner's Representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as provided in Subparagraph 2.6.15, the Design Professional does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

4.3 The Owner shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements,

encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other improvements including landscaping full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths; and, to furnish soil tests, test borings, material tests, environmental management plan and other special data as may be mutually agreed by the Owner and Design Professional, to the best of the Owner's capabilities.

4.4 The Owner shall examine documents submitted by the Design Professional and shall render decisions promptly to avoid unreasonable delay in the progress of the Design Professional's services.

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

4.6 The Owner shall provide all Central Purchasing functions and shall be responsible for associated costs such as the cost of advertising project and construction document reproduction costs in accordance with this agreement.

4.7 **ENERGY STAR:** If Project is required by Part A of this Agreement to qualify for the EPA ENERGY STAR, then the Owner shall:

1. assist the Design Professional and participate in opening the Owner's Portfolio Manager account for entering data for utility usage tracking required by ENERGY STAR.
2. at Substantial Completion, implement an energy management program in accordance with ENERGY STAR.

ARTICLE 5

CONSTRUCTION COST

5.1 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 professional familiar with the construction industry. Notwithstanding the requirements of Paragraphs 5.4 and 5.5, it is recognized, 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.

5.2 The MACC is established, as a condition of this Agreement, as a fixed limit of Construction Cost for design and bidding purposes. 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 be permitted to determine, with Owner approval, what materials, equipment, component systems, and types of construction are to be included in the Construction Documents to bring Construction Cost within the MACC. With the written consent of the Owner, which consent shall not be unreasonably withheld, the Design Professional may also include in the Construction Documents either additive or deductive alternate bids to adjust the Construction Cost to the fixed limit.

5.3 If bidding or negotiations with potential contractors have not commenced within **sixty (60) days** of the Design Professional submitting Construction Documents to the Owner, the Project budget or MACC may be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.4 When the MACC is exceeded by the lowest bona fide bid, the Owner may:

1. pending fund availability, give written approval of an increase in the MACC; or,
2. authorize re-bidding the Project within a reasonable time; and,
3. 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 and assist the Owner through the re-bidding process.

5.5 If during the development of the Construction Documents, estimates indicate that the Project exceeds the MACC, the provisions of Paragraphs 5.1 through 5.4 shall apply.

ARTICLE 6

REIMBURSABLE EXPENSES

6.1 Reimbursable expenses are limited by this Agreement and are those expenses above and beyond Basic Services compensation and are the actual expenditures made by the Design Professional in the interest of the Project. Reimbursable expenses shall be limited to expenses for:

1. surveying, hazardous material testing or abatement, geotechnical testing, extensive civil engineering or any other project related expenses not included in Basic Services and authorized by the Owner;
2. transportation when traveling in connection with the Project, if allowed by provisions incorporated into 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 such travel shall be authorized in advance by the Owner;
3. fees paid for securing approvals of authorities having jurisdiction over the Project;
4. reproduction costs for Owner reviews and initial bidding, provided there is written Owner prior approval of estimated costs. The Design Professional may be responsible for subsequent bidding reproduction costs in accordance with Paragraph 5.4. Reproduction costs during the construction phase, provided there are written Owner prior approval of estimated costs. All other reproduction costs as may be required for office use of the Design Professional and the Design Professional's Consultants shall be a part of the Design Professional's Basic Compensation; and,
5. conditional costs necessary when working in remote locations, such as, Federal Express and long distance phone charges.

6.2 Construction documents and specifications may be printed under the terms of a contract between the Owner or the PSFA and a current Vendor on contract.

6.3 The Design Professional shall charge Bidders a deposit fee authorized by the Owner that approximates the full cost of reproduction of drawings, specifications, and other documents required by the Owner to solicit bids 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. All forfeited fees shall be given to the Owner.

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.

- 6.5** Applicable gross receipts tax shall be charged at the current rate at the time of the billing.
- 6.6** Design Professional shall have written Owner approval prior to incurring any reimbursable expense in excess of \$200.
- 6.7** Reimbursable expenses shall not exceed allowance defined in Part A of this Agreement and shall be compensated in accordance with Paragraph 13.5.

ARTICLE 7 PAYMENTS TO THE DESIGN PROFESSIONAL

7.1 PAYMENTS FOR BASIC SERVICES

- 7.1.1** Payment for Basic Services shall be in proportion to services performed within each phase of services as provided by 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:
1. lowest bona fide bid or negotiated proposal; or
 2. most recent Statement of Probable Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

7.2 PAYMENT FOR SERVICES AND COSTS

7.2.1 The Design Professional shall submit monthly, a fully completed request for payment for all completed services and costs on the form provided as Exhibit F to this Agreement. **Request for Payment shall be submitted to the Owner for approval on or about the 25th of the month for which payment is requested.** The Owner shall within **seven (7) days** of receipt of a properly executed Request for Payment, approve or notify the Design Professional in writing of specific reasoning for any disputed and unapproved amounts. The Design Professional shall ensure that the approved **Request for Payment is delivered to the PSFA Regional Manager prior to the 8th of the month "cut-off"** who shall then process approved amounts within 30 days of that time, with faster payment notwithstanding, and make payment of undisputed amounts to the Design Professional. Requests for payment received after the 8th of the month "cut-off" will be processed along with the following month's applications.

7.2.2 The Design Professional shall submit, with 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. 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 Contractor, or on account of the cost of modification to the Work other than those for which the Design Professional may be liable in accordance with this Agreement.

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

ARTICLE 8

DESIGN PROFESSIONAL'S RECORDS AND AUDIT

8.1 Records of expenses by the Design Professional and Consultants pertaining to 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 shall be subject to inspection by the Owner, the Department of Finance and Administration and the State Auditor and shall be maintained for inspection of a period of three years following completion of the Project or any disputes related to the Project or, until all applicable Statutes of Limitations have run, but not less than six years, whichever period is longest and this provision shall survive and continue beyond the termination of other terms of this Agreement.

ARTICLE 9

OWNERSHIP AND USE OF DOCUMENTS

9.1 Original construction document drawings, designs, specifications, notes, project manuals, and related documents of Work developed in the performance of this Agreement by the Design Professional shall become the sole property of the Owner whether the Project for which they are made is constructed or not, pursuant to Section 13-1-123, NMSA 1978. These documents shall be kept on file by the Owner unless, by written request, the Owner elects that the Design Professional maintain the originals. The Design Professional shall, regardless of location of originals, maintain a complete digital set of any and all record documents developed under this Agreement. Prior to Bid, the Design Professional shall provide to the Owner a digital set of the Bid Documents in accordance with Paragraph 11.23.

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

9.3 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 Paragraph 9.2.

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

ARTICLE 10

TERMINATION OF AGREEMENT

10.1 If either party should fail to fulfill in a timely and appropriate manner 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 other remedies available under the terms of this Agreement, shall thereupon have the right to terminate this Agreement by:

1. giving written notice to the other party of such default;
2. specifying steps necessary to cure the default; and,
3. following notice(s) designating the date of termination at least **seven (7) days** before the effective date of such termination.

If the default has not been cured by the specified date of termination, it shall be effective without further notice.

10.1.1 Failure of the Design Professional to maintain the schedule is cause for termination.

10.1.2 The Design Professional may terminate this Agreement if, through no act or no fault of the Design Professional or Consultants to any tier, the Owner is causing a delay and the Design Professional has notified the Owner in writing if the Design Professional feels the Owner is causing a delay and cure for the delay, the Design Professional may terminate the Agreement if such delays aggregate more than one hundred percent (100%) of the total number of days scheduled in Part A of this Agreement for completion of Construction Documents, or one hundred twenty (120) days in any 365-day period, whichever is less.

10.2 This Agreement may be terminated by Owner 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.

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.

ARTICLE 11

GENERAL AND SPECIAL PROVISIONS

11.1 Law. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico as the same from time to time exist.

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 Contractor, 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 of this Agreement. The Owner and the Design Professional each shall require appropriate similar waivers from their Contractor, consultants, and agents.

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

11.3 Mediation.

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

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

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

11.4 Arbitration.

11.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 11.3.

11.4.2 Claims, disputes or other matters in question between the parties not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Design Professional.

11.4.3 A demand for Arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

11.4.4 Claims and Timely Assertion of Claims. The party filing a Notice of Demand for Arbitration must assert in the Demand all Claims then known to that party on which arbitration is permitted to be demanded.

11.4.5 Arbitration proceedings under this agreement may be consolidated or joined with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator, in any of the pending cases, or if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order. Inclusive to this Subparagraph are the Owner, the Design Professional, the Contractor, all tiers of Subcontractors, material suppliers, equipment suppliers, engineers, designers, lenders, sureties, and all other parties concerned with the construction of the Project are bound, each to each other, by this Subparagraph, provided such party has signed this agreement or has signed an agreement which incorporates this agreement by reference or signs any other agreement to be bound by this arbitration clause.

11.4.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

11.5 Effective Agreement. This Agreement shall not become effective until: (1) approved by the Owner for compliance with the financial requirements of the legislation or funding source authorizing the Project in whole or in part; and (2) signed by all parties required to sign this Agreement.

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

11.7 Conflict of Interest. The Design Professional affirms that he currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Design Professional further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Design Professional. The Design Professional also agrees that, unless Owner provides prior written approval, neither the Design Professional nor any employee of same shall have an interest, direct nor indirect, in any company hired for the Project as Contractor, any tier Subcontractors, or supplier, except when the Project is a design-build project.

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

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

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

be in compliance with these requirements during the term of this Agreement, the Design Professional agrees to take appropriate steps to correct this noncompliance.

11.11 Liability Insurance.

11.11.1 Professional Liability Insurance. The Design Professional shall provide and maintain Professional Liability Insurance with one million dollar limit (\$1,000,000) and a maximum deductible of \$50,000 unless as otherwise provided in Other Conditions or Services (Part A of Agreement) 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. The coverage provided herein shall contain an endorsement providing **thirty (30) days** notice to the Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer licensed to do business in the State of New Mexico and acceptable to the Owner. Each year insurance is required; it shall be the Design Professional's obligation to provide evidence of compliance with this Paragraph. Provision of insurance does not limit the liability of the Design Professional under 11.2.3 herein.

11.11.2 Liability Insurance. The Design Professional shall purchase from and maintain in a company or companies lawfully authorized to transact insurance in New Mexico, insurance that shall protect the Design Professional and from claims set forth below, which may arise out of or result from operations under the Contract and for which the Design Professional may be legally liable, whether such operations be by the Design Professional or by anyone directly or indirectly employed, or by anyone for whose acts may be liable:

1. claims under Workers' Compensation, Disability Benefit and other similar Employee Benefit Acts, which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Design Professional's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design Professional's employees;
4. claims for damage for personal injury;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
6. claims for damages because of bodily injury, death of a person property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to the Design Professional's obligations under Paragraph 3.18.

11.11.2.1 The Design Professional shall ensure that liability insurance is maintained in accordance with Paragraph 11.11 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 Paragraph 11.11. 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.

11.11.2.2 The insurance required by Subparagraph 11.11.2 shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Coverage, shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after final payment.

11.11.2.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by Paragraph 11.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least **forty-five (45) days** prior written notice has been given to the Owner.

11.11.2.4 The Certificates of Insurance shall clearly state the coverages, limits of liability, covered operations, effective dates and dates of expiration of policies of Insurance. The Design Professional will promptly notify and furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Certificates of Insurance shall be in the appropriate ACORD form, or similar format acceptable to the Owner and shall include the following statements:

1. "The State of New Mexico, the *(the name(s) of the Owner whose name(s) appear on the Agreement)*, its agents, servants and employees are recognized as Additionally Insured."
2. "The insurance coverage certified herein will not be canceled or materially changed, except after **forty-five (45) days** written notice has been provided to the Owner"
3. "The insured will not violate, or permit to be violated, any conditions of this policy, and will at all times satisfy the requirements of the insurance company transacting the policy."
4. "The coverage provided by this certificate is primary."
5. "Nothing in this certificate of coverage will be construed to affect the State of New Mexico or owner, agents, servants and employees defenses, immunities or limitations of liability under the New Mexico Tort Claims Act."

11.11.2.5 Minimum Required Coverage:

11.11.2.5.1 Worker's Compensation Insurance shall be provided as required by applicable State law for all employees engaged in work on this Project and under this Contract. In case any class of employee engaged in work on the Project under this Contract is not protected under the Worker's Compensation Statute, the Design Professional shall provide, and cause each Consultant to provide Employer's Liability Insurance in an amount not less than five hundred thousand (\$500,000). Failure to comply with the conditions of this Subparagraph 11.11.2.5.1 will subject this Contract to termination.

11.11.2.5.2 Public Liability Insurance shall not be less than the liability amounts set forth in the New Mexico Tort Claims Act, §41-4-1 et seq. NMSA 1978, as it now exists or may be amended.

11.11.2.5.3 Comprehensive Vehicle Liability Insurance, for both owned and non-owned vehicles, shall be one million dollars (\$1,000,000) per occurrence combined single limit for both personal injury and property damage.

11.12 Consultant Relations. By appropriate agreement, written where legally required for validity, the Design Professional shall require each Consultant providing services for this Project, to the extent of the Services to be performed by the Consultant, to be bound to the Design Professional by the terms of this Agreement including, but not limited to the requirements of Paragraphs 11.11, and to assume toward the Design Professional all the obligations and responsibilities, including performance, as the Design Professional assumes toward the Owner. Each Consultant agreement shall preserve and protect the rights of the Owner under this Agreement with respect to the services to be performed. Where appropriate, the Design Professional shall require each Consultant to enter into similar agreements with their consultants. The Design Professional shall make available to each proposed Consultant, prior to execution of an agreement related to this Project, copies of this Agreement to which the Consultant will be bound. Nothing contained in this Paragraph or elsewhere in this Agreement shall create any contractual relationship with or cause of action in favor of a third party against the Owner.

11.13 Assignment. The Design Professional shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the Owner.

11.14 Mergers, Dissolution, Successors, and Assigns. The Design Professional agrees that during the term hereof it will maintain its existing business structure, the terms and provisions hereof shall extend to, be binding upon, and inure to the benefit of the successors and assigns of the respective parties hereto, the business structure will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferred business structure, as the case may be:

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

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

11.16 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.

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

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

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

- Exhibit A** - Time Schedule for Project Phases
- Exhibit B** - Architect's or Engineer's Errors and Omissions Insurance Certificate
- Exhibit C** - List of Consultants and Consultants' Agreements
- Exhibit D** - Work Order and Work Order Rate Schedule (If Used)
- Exhibit E** - Design Professional Additional Services Proposal/Amendment Form
- Exhibit F** - Design Professional Pay Request Form
- Exhibit G** - Boilerplate procurement documents and Conditions of the Contract for Construction

11.19 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.

11.20 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

11.21 PSFA as Co-Owner. If project includes funding from the Public Schools Capital Outlay Council(PSCOC), and in accordance with Paragraph 1.2, all Work that incorporates PSCOC funding shall:

1. interpret the Owner referred to throughout the Construction Documents to be both the School District and the PSFA as if singular in number;
2. have two (2) Owner representatives such that agreement of both representatives shall be required in all instances where the Construction Documents require or contemplate Owner approval;
3. recognize both the PSFA representative and the school district representative designated in writing, as Owner in accordance with Subparagraph 1.17 and this Subparagraph; and,
4. after Final Completion in accordance with Paragraph 9.11 of the General Conditions of the Construction Contract, the Contract requirements shall recognize only the School District as the Owner; and,
5. be done within and in accordance with Subparagraph 11.22 requiring use of the PSFA-CIMS system; and,
6. otherwise be fully in accordance with the Construction Documents including all contractual and implied responsibilities.

11.22 Communication Facilitation. Communication utilizing the PSFA Internet/Web based Construction Information Management System (CIMS) system is a requirement of Basic Services. The Design Professional shall if needed, and within **seven (7) days** of this agreement, schedule PSFA training of project personnel on the use of PSFA-CIMS. The Design Professional shall utilize PSFA-CIMS for project management during development of the Contract Documents and for project administration during construction of the Project along with the Contractor, and the Owner. Each party shall:

1. create all contractual communications through the PSFA-CIMS and load all Construction Documents into PSFA-CIMS;
2. have access to the Internet and an Internet e-mail address, of their own choice, and provide to the PSFA the names, positions, and e-mail addresses of all individuals who will have access to the PSFA-CIMS;
3. have adequate computing hardware to run PSFA-CIMS and:
 - A. Browser – Internet Explorer 6.0 SP2 or latter
 - B. Operating system - Windows® XP SP2
 - C. Display – 1024x768
 - D. CPU – 1.4 GHz or greater
 - E. Connection – ISDN, T1, broadband, or DSL

F. RAM – 1024 MB/1 GB or higher

4. agree that use of this PSFA-CIMS software will not replace or change any contractual responsibilities; and,
5. have installed Adobe Acrobat 7.0 or higher, pdf converter or equal; and,
6. optionally have, but not required to have, as a benefit to sending images to the Contractor or Owner as an attachment instead of faxing or mailing, an attached scanner minimum 800x600 pixels and a digital camera minimum resolution of one (1) mega pixels.

For PSFA-CIMS information on installation and use of the PSFA-CIMS or for scheduling training contact the PSFA-CIMS administrator at (505)843-6272 or e-mail question to techsupport@nmpsfa.org and include PSFA-CIMS support in subject line.

11.23 Electronic Data – The Owner requires that Bid Documents, in their original form, are electronic files and that a set shall be provided to the Owner prior to Bid. Acceptable format for drawings shall be AutoCAD (.dwg) files and all other Specifications and Project Manual documents shall be Microsoft Word (.doc) or alternately Rich Text (.rtf) files with the exception that Submittals List that shall be Microsoft Excel (.xls) in Owner specified format.

ARTICLE 12

OPERATION AND MAINTENANCE

12.1 The design shall provide for ease of operation and maintenance and the ability to easily replace expendable building components such as lamps or filters and to repair, adjust or replace equipment are essential to the Project. The Design Professional shall endeavor to ensure that these services can be adequately performed after the Project is accepted by the Owner,, and shall:

1. specify easy access to building components or equipment that require frequent replacement or adjustment such as lamps, filters, motors, pumps or dampers;
2. provide Construction Documents that accurately depict the installation locations for proper function and include all required sequencing or operating logic for intended functions;
3. specify all equipment systems be appropriately identified and labeled to describe the capacities, flows, and other pertinent information related to their maintenance and safe operation;
4. 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
5. provide adequate janitorial and maintenance storage space needs;
6. at the completion of the Schematic, Design Development, and Construction Document Phases, brief the Owner and the User Representative on the rationale for the selection of the major mechanical, electrical and lighting systems to be specified in the Construction Documents, together with their probable life-cycle costs if required by Other Conditions or Services (Part A of this Agreement).

ARTICLE 13

COMPENSATION

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 Paragraphs 2.0 through 2.6, 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.

13.3 **ADDITIONAL SERVICES**, excluding consultants, shall be computed at the rate included in this Agreement. GRT will be added as a separate item in the payment request.

13.4 **ADDITIONAL SERVICES OF CONSULTANTS** required beyond Basic Services, including but not limited to 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 payment request.

13.5 **REIMBURSABLE EXPENSES**, if allowed by this Agreement, shall be compensated at direct cost not to exceed allowance as defined in Part A of this Agreement, unless modified otherwise by written agreement
