



GENERAL CONDITIONS

**MARICOPA COUNTY SPECIAL HEALTH CARE
DISTRICT dba Valleywise Health
Contracts Department
2619 East Pierce Street, 1st Floor
Phoenix, Arizona 85008-6092**

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SECTION 1 — SCOPE OF THESE GENERAL CONDITIONS

These General Conditions encompass provisions that apply and are incorporated into all construction contracts entered into by the Maricopa County Special Healthcare District dba Valleywise Health unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form, including without limitation, Fixed Price, Construction Manager at Risk (CMAR), Guaranteed Maximum Price (GMP) Cost-Based, and Job order Contracts (JOC). Unless otherwise specified in the Contract, the additional provisions in Section 15 apply solely to Guaranteed Maximum Price or GMP and Cost Based Contracts; the additional provisions in Section 16 apply solely to Job Order Contracts or "JOCs," and the additional provisions in Section 17 apply solely to contracts involving Pre-Construction Services. Section 18 attached hereto is incorporated herein.

SECTION 2 — GENERAL DEFINITIONS

Note: Additional definitions of terms that only have application to Guaranteed Maximum Price (GMP) and Cost-Based Contracts, Change Orders and Job Orders are found in Section 15.1 below; and additional definitions of terms that only have application to Job Order Contracts (JOCs) are found in Section 16.1 below; additional definitions of terms that only have application to contracts involving Pre-Construction Services are found in Sections 17.1 below; and additional definitions of terms that only have application to Design Professional Contracts and Design Services are found in Section 18.1 below.

Alternate Systems Evaluations or Alternative Analysis — Alternatives for design, means and methods or other scope considerations that are evaluated using value analysis principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets Valleywise Health requirements.

BIM - Building Information Modeling system utilized in relation in the performance, design, construction, and documentation of the Services, Work and/or Projects, including creation of a VC (Virtual Construction) Model using the BIM technologies required by, and in accordance with the BIM Performance Requirements as set forth in Appendix 2.

Board (Governing Board) — The Maricopa County Special Health Care District Board of Directors.

Change Order — A written instrument issued after execution of the Contract Documents signed by Valleywise Health and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

CMAR or Construction Manager at Risk — The person or firm selected by Valleywise Health to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract with Valleywise Health. In these General Conditions, the term "Contractor" includes CMAR under a Construction Manager at Risk Contract. See, for example and not as a limitation, Sections 4, 6-15, and 17 below.

CMAR Fee or Contractor's Fee — An agreed to percentage or fixed fee in an accepted GMP that represents the Contractor's fee for performance of the Work.

Consultant — Person or firm that provides professional services under a consulting agreement and includes Subconsultants retained by the Design Professional for the performance of any of the Design Services to be provided by the Design Professional under the Contract Documents.

Contract — The written agreement executed between Valleywise Health and Contractor, including all of the Contract Documents.

Contract Documents — The documents which together form the Contract between Valleywise Health and Contractor, as identified in Article 2 of the Contract, or are otherwise incorporated into the Contract, including the Contract, the exhibits thereto, these General Conditions, any Notice to Proceed, and any Job Order (if applicable), the Plans and Specifications, Project Schedule, written and properly executed Change Orders, MAG Specifications and Valleywise Health amendments thereto, and any other documents so designated in the Contract.

Contract Price — The agreed-upon price to be paid to Contractor for full, timely, and acceptable completion of the Services or Work under the terms of the Contract.

Contract Time(s) — The number of days or the dates related to the applicable phase, Substantial Completion, and/or Final Completion as stated in Contract Documents. The Contract Time is set forth in the Contract and is based upon the Project Schedule agreed to by Valleywise Health in writing.

Contractor — The person or corporation with whom Valleywise Health has entered into an agreement for construction related work or services in relation to the Project at issue. As used in these General Conditions, the term Contractor includes CMAR, Design-Builder and JOC under contract with Valleywise Health to provide pre-construction and/or construction services.

Contractor Payment Request — The form that is accepted by Valleywise Health and used by Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or Valleywise Health.

Construction Budget — The Valleywise Health budget for construction of the Project.

Construction Documents — The plans, specifications, and drawings prepared and issued by the Design Professional and approved by Valleywise Health for construction, meaning the documents are sealed by the Design Professional (as required), acceptable for permitting and incorporated into the Contract by reference. All amendments and modifications to the Construction Documents must be approved in writing by Valleywise Health prior to incorporation into the Contract.

Cost of the Work — The term Cost of the Work shall mean costs necessarily incurred by Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of Valleywise Health.

Critical Path Method (CPM) — A scheduling technique which identifies the logical sequence of the activities occurring in a Construction Project, the anticipated time required to complete each activity in the Project, and the activities that must be completed on schedule to finish the Project within the anticipated time. Typically, activities are arranged in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used, and limitations can be identified. See Sections 6.2.9 & 17.3.1.

Critical Path — Critical path is the sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of Valleywise Health.

Day — Calendar Day(s) unless otherwise specifically stated in the Contract Documents.

Design Professional — The qualified, licensed person, firm or corporation who furnishes Design Services under the Contract Documents. Also includes a Design-Builder as applied to the Design Services being provided by the Design-Builder.

Design Services or Services— Any and all services to be provided by the Design Professional under the Contract Documents and may include, but not be limited to: development of Construction Documents; review of Contractor Submittal(s); review of and response to Requests for Information, approval and certification of progress payment applications; construction administration, Substantial Completion, and Final Acceptance and Completion, if so designated, and any and all other services required for the full, professional and timely performance by the Design Professional, Consultants, and their subconsultants and/or subcontractors.

Differing Site Conditions — Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work at the general area of the Site. Caliche, rock, hard-digging or sandy/silty soil encountered on a project is not considered a "Differing Site Condition."

Drawings (Plans) — Documents, which visually represent the scope, extent and/or character of the Work to be furnished and performed by Contractor during the construction phase and which have been prepared or approved by the Design Professional and Valleywise Health. These documents include Drawings that have reached a sufficient state of completion and released by Design Professional solely for the purposes of review and/or use in performing constructability or bid-ability reviews by Contractor and in preparing cost estimates (e.g. Master Planning and Programming, Schematic Design, Design Development, and Construction Drawings), but "*not for construction.*" Shop Drawings are not Drawings until accepted in writing by Valleywise Health and/or Design Professional, as applicable.

Fixed Price — A fixed price or amount for a Contract Price, scope of work, materials, or other item under a Contract, Change Order, Job Order, or other agreement, which Valleywise Health agrees, in writing, to pay instead of the actual cost. See, e.g., Sections 7.1, 7.4.1, 16.3.3.4, and 16.4.2.

Float — The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to Valleywise Health.

Laws, Regulations, or Legal Requirements — Any and all applicable laws, rules, regulations, ordinances, codes and orders applicable to the Project of any and all governmental bodies, agencies, authorities and courts having jurisdiction and any applicable provisions of the Development Agreement for the Project (if any), including, without limitation, those provisions relating to the design and construction of the Project, including without limitation the Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities, including without limitation compliance with the 2010 regulations governing implementation of the ADA to the extent applicable.

Line Item — The individual elements of Work identified on a bid or other schedule and associated with a price or a unit price and quantity particular to that individual element of the Work. Also refers to individual items of work within the Schedule of Values.

MAG — The Maricopa Association of Governments.

MAG Specifications — The most current version of the Uniform Standard Specifications for Public Works Construction published by MAG.

MAG Standard Details — The most current version of the Uniform Standard Details as published by MAG. Valleywise Health (Owner or OWNER) — Maricopa County Special Healthcare District dba Valleywise Health, a special health care district of the State of Arizona, with whom Contractor has entered into the Contract and for whom the Services and/or Work are to be provided pursuant to the Contract(s).

Milestone(s) Specific date or dates for significant events on the Project Schedule, or other relevant schedule, which can be utilized for, without limitation, monitor progress of the Work and/or Services, establish important deadlines, measure performance, assess liquidated or other damages, support payment or withholding of payment, and/or determine breach of the Contract Documents.

Minor change — A change in the Work having no impact on cost or time or the Valleywise Health - approved design intent, as determined by Valleywise Health.

Notice to Proceed (NTP) — A written notice given by Valleywise Health to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Contract.

Project — The Project specified in the Contract (including a Job Order and/or Project Order).

Project Manager — The Project Manager designated in Article 1 of the Contract, or any successor thereto designated by Valleywise Health. The Project Manager has the authority to act on

behalf of Valleywise Health, as delineated and limited by the Contract Documents and applicable law. Valleywise Health shall communicate with Contractor through the Project Manager. However, the Project Manager has no authority to bind Valleywise Health or Valleywise Health Board in contravention of any Valleywise Health code, State or Federal statute or regulation, or these General Conditions.

Project Record Documents — The Construction Documents which set forth how the Project is to be and was constructed, including the Drawings, Addendums, Architects Supplemental Instructions ("ASI's"), Proposal Requests (PR's), Request for Information ("") and applicable Submittals, as updated.

Project Schedule — The schedule for the completion of the Project agreed to and/or required by Valleywise Health.

Project Specific Conditions — Additional conditions which apply to the specific Project and/or Scope of Work which are set forth in Exhibit D of the Contract.

Project Team — The Project Team consisting of the Design Professional, Contractor or CMAR, and/or Project Manager, and such others as Valleywise Health may designate.

Punch List — The list initially prepared by Contractor pursuant to the Contract Documents, reviewed and supplemented by the Project Manager (and at the sole option of the Project Manager, the Design Professional) and approved by Valleywise Health containing items of incomplete work not impacting Substantial Completion, if allowed for under the Contract, and to be completed or corrected by Contractor after Substantial Completion and before Final Acceptance and Final Completion in accordance with the Contract Documents.

Quality Assurance (QA) Testing — Testing performed to verify the accuracy and applicability of the QC testing results and to ascertain that the materials installed meet the specified levels of quality in accordance with the contract documents.

Quality Control (QC) Testing — Testing performed to assure that the materials installed comply with the requirements in the Contract Documents.

Requests for Information (RFIs) — Formal written request from Contractor to Valleywise Health and/or Design Professional for the Project seeking clarification or additional information needed for Contractor to properly complete the Work and/or Services under the Contract. Valleywise Health may require RFIs to be submitted on a specific form or in a specified format.

Services — See Design Services above.

Schedule of Values (SOV) — The specified document prepared by Contractor, and approved and accepted by Valleywise Health, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

Scope of Work — The scope of work agreed to and/or required by Valleywise Health and incorporated into the Contract as Exhibit A.

Shop Drawings — All drawings, diagrams, schedules and other data specifically prepared for the Work by Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site — The land and or premises on which the Project is located, including all buildings and/or structures thereon, existing or to be built, including without limitation the airspace above and/or associated with the Site, including without limitation the airspace necessary to operate any and all helipads, landing pads, and other air traffic associated with the licensing and operation of Valleywise Health medical facilities.

Specifications — The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, performance and

workmanship as applied to the Work and certain administrative details applicable thereto. Where specified, the Project shall be constructed using the current Uniform Standard Specifications and Details for Public Works Construction as furnished by the Maricopa Association of Governments, as amended by Valleywise Health.

Subconsultant — A person, firm or corporation having a Contract with Consultant/Contractor to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor — An individual or firm having a direct Contract with Contractor or any other individual or firm having a Contract with the aforesaid contractors at any tier, who undertakes to perform a part of pre-construction services or construction phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor selection process described in the Contract Documents, if any.

Substantial Completion — The date when the Valleywise Health determines that the Work (or separable units of Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents such that the Project is ready for use by the Valleywise Health for its intended purpose, is ready to be opened to the general public, fully occupied or used by Valleywise Health (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories, and similar elements are installed in the proper manner and in operating condition, inspected, and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air conditioning, vertical transportation, and other systems properly operating with proper controls; lighting, information technology (IT), computer, network, data, and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion.

Supplier — A manufacturer, fabricator, distributor, or vendor having a direct Contract with Contractor or with any Subcontractor to furnish materials, services or equipment to be incorporated in the construction phase Work by Contractor or any Subcontractor.

Team Approach - Valleywise Health desires to implement a comprehensive team approach to the design, construction, and documentation of all Valleywise Health Projects, creating a "team" or "win-win-win" arrangement. The Team Approach will include, but not be limited to, attendance and participation in all Project Team meetings and work sessions required under the Contract Documents or by Valleywise Health, to facilitate Valleywise Health 'intension to follow a highly interactive process and team approach, designed to incorporate many interests and the participation of key stakeholders, including Valleywise Health constituents, leaders and staff, and the Project Team involved in the Project, Work and/or Services. The Project Team shall participate in an Integrated Project Management approach, consisting of the Valleywise Health Team, the Project Team and their respective subcontractors working together in an integrated, coordinated and cooperative manner for the benefit of all the members of the Project Team. See for example only and not as a limitation, Sections 4.1.3, 17.2.2, 18.2.2, 18.2.3, 18.2.4 and 18.2.5 below.

Total Float — Number of Days by which pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent Contract Time or schedule Milestone in the Project Schedule.

Work — The entire completion of construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

SECTION 3 — STANDARD SPECIFICATIONS AND DETAILS

- 3.1 Valleywise Health operates under the latest revision of the MAG Specifications as amended by Valleywise Health. Valleywise Health current effective amendment to the MAG Specifications may be downloaded at the following web address:
[https://azmag.gov/Portals/0/Documents/MagContent/2022 MAG Uniform Standard Specifications for Public Works Construction SPECS FINAL.pdf?ver=2021-12-28-105706-627](https://azmag.gov/Portals/0/Documents/MagContent/2022%20MAG%20Uniform%20Standard%20Specifications%20for%20Public%20Works%20Construction%20SPECS%20FINAL.pdf?ver=2021-12-28-105706-627)
- 3.2 The MAG Specifications and Standard Details and Valleywise Health ' amendments thereto are incorporated into the Contract by reference.
- 3.3 Valleywise Health has additional guidelines, procedures and requirements applicable to work performed at or on any Valleywise Health sites and/or to the contractors, personnel, employees, subcontractors and others working on or at Valleywise Health sites and facilities, including, without limitation: Contractor's Guide, Valleywise Health Orientation Packet, Procurement Code, and all guidelines, procedures and requirements set forth in Appendix 1 hereto.

SECTION 4 — CONTRACTOR'S RESPONSIBILITIES FOR CONSTRUCTION SERVICES

4.1 GENERAL

- 4.1.1 Contractor shall construct the Work in accordance with the Contract Documents and as outlined in Exhibit A of the Contract to the satisfaction of Valleywise Health, exercising the degree of professional care, skill, diligence, quality and judgment that a professional construction manager engaged, experienced and specializing in the construction management of construction and/or facilities of similar scope, function, size, quality, complexity and detail in urban areas throughout the United States comparable to the Phoenix Metropolitan Area, Arizona would exercise at such time, under similar conditions. Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.
- 4.1.2 Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license laws, including all requirements with respect to being duly registered and licensed.
- 4.1.3 Team Approach. As set forth in the definition of "Team Approach" set forth in Section 2 above, Valleywise Health desires to implement a comprehensive team approach to the design, construction, and documentation of all Valleywise Health Projects. Contractor shall fully participate in the Valleywise Health Team Approach, including without limitation attending and fully participating in all Project Team meetings and work sessions required under the Contract Documents or by Valleywise Health to facilitate Valleywise Health intension to follow a highly interactive process and team approach. See, as examples only and not as a limitation, Sections 17.2.2, 18.2.2, 18.2.3, 18.2.4 and 18.2.5 below.
- 4.1.4 BIM Performance Requirements. Contractor, and its subcontractors and suppliers, will cooperate with, coordinate with, assist, and provide information and data to Valleywise Health and the Design Professional(s) on the Project in generating the BIM documents and/or models satisfying the BIM Performance Requirements as set forth in Appendix 2 in relation to the Project. Contractor will also comply with the BIM Performance Requirements in Appendix 2 in generating and reporting any Project documentation, drawings, information, data, revisions, shop drawings, submittals, or other materials to be incorporated in the BIM documentation and/or models for the Project.
- 4.2.1 Prior to award of the Contract, Contractor must provide to Valleywise Health Integrated Program

4.2 CONTRACTOR'S PRE-CONTRACT AND PRE-WORK DELIVERABLES

Management Office or the Program Manager as specified by Valleywise Health its Contractor's License classification and number and its Federal Tax I.D. number.

- 4.2.2 Before beginning any Work under the Contract, Contractor shall execute the Contract and deliver to Valleywise Health the items listed in Sections 4.2.3 and 4.2.4 below, and the Contract must be executed by Valleywise Health. Failure to do so will be a material breach of the Contract entitling Valleywise Health to terminate the Contract for Cause.
- 4.2.3 When Contractor delivers the executed Contract to Valleywise Health, Contractor shall also deliver to Valleywise Health such bonds and/or certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by Valleywise Health) required under Section 11 of these General Conditions, and as the Contract requires.
- 4.2.4 As evidence of Workmen's Compensation Insurance, Contractor shall provide a letter of certification from the Industrial Commission of Arizona that Contractor is insured by the State Compensation Fund or is an authorized self-insurer or a certificate of insurance issued by an insurance company authorized by the Insurance Department of Arizona to write Workmen's Compensation and Occupational Disease Insurance in the State of Arizona.
- 4.2.5 Blank
- 4.2.6 Site Photographing Requirement. Prior to performing any Work, Contractor shall document the existing conditions of the Site, all other areas where Work will occur and all adjacent areas that may be impacted by the Work via an electronic photographic format as approved in writing by Valleywise Health. Contractor shall photograph all areas, features, buildings and other public and private improvements that could potentially be impacted by the Work. Contractors shall coordinate documentation with the Project Manager. Contractor shall not take picture or images of patients, family, visitors or staff and will take extreme care not to include any such pictures or images. When video-recording private property, Contractor shall also coordinate the documentation with the private property owner, if possible. Contractor shall provide Valleywise Health Inspector with a copy of said format prior to performing any work.
- 4.2.7 Government Approvals and Permits. The Owner shall obtain all necessary permits and government approvals for the Work (including without limitation from the Federal Aviation Authority, if applicable) and pay all applicable fees, unless otherwise noted on the plans and in the specifications. Excluded from the above are items such as all costs incurred by the Contractor in securing the permits such as, cost for all shutdowns or outages, cost for pole bracing, cost of permits for construction water, cost of construction water, cost for any additional insurance requirements, cost for any licenses, and other similar type costs. Contractor is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental and regulatory permit notices. Copies of all permits, approvals and the associated notices must be provided to Valleywise Health prior to starting the permitted activity.

4.3 PRE-CONSTRUCTION CONFERENCE

- 4.3.1 Prior to the commencement of any Work, Valleywise Health will schedule a Pre-Construction Conference.
- 4.3.2 The purpose of this Conference is to establish a working relationship between Contractor, the utility firms, and various Valleywise Health agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.
- 4.3.3 Prior to the Pre-construction Conference, Contractor shall provide the Project Team with a Schedule of Values in a form specified by Valleywise Health reflecting the subcontracts and other categories that will be used to submit Pay Applications for the Work. The total amount of

the Schedule of Values shall not be greater than the Contract Price. The Schedule of Values shall be reviewed at the Pre-Construction Conference and revised in response to comments and questions from Valleywise Health. Once accepted by Valleywise Health in writing, the Schedule of Values for the Project will not be changed without the prior written approval of Valleywise Health.

4.3.4 Minimum attendance by Contractor at any mandatory meeting with Valleywise Health shall be: (1) Contractor's Representative, who is authorized to execute and sign documents on behalf of Contractor; (2) Contractor's on-site Superintendent(s); and (3) Contractor's Safety Officer, or other employee responsible for safety.

4.4 PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)

4.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of Valleywise Health or a separate Contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.

4.4.2 Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, safety, sequences and techniques of construction.

4.4.3 Contractor's Superintendent shall be present at the Site at all times that material Work under the Contract is taking place. Contractor's Superintendent or designee shall be present at the Site at all times any other Work under the Contract is taking place.

4.4.3.1 All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.

4.4.3.2 In the event of any noncompliance with this Section 4, Valleywise Health may require Contractor to stop or suspend the Work in whole or in part.

4.4.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

4.4.5 Before starting the Work, Contractor shall carefully study and compare the various plans, drawings, other Contract Documents, and Specifications relative to that portion of the Work, as well as the information furnished by Valleywise Health, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. The exactness of grades, elevations, dimensions, or locations given on any Drawings, or the work installed by other contractors, is not guaranteed by Valleywise Health.

4.4.6 Before ordering materials or doing work, Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.

4.4.7 If Contractor observes error, discrepancies or omissions in the Contract Documents, it shall promptly notify the Design Professional and Valleywise Health and request clarification. If Contractor, in the Contractor's capacity as a contractor and not as a licensed design professional, should have recognized such error, inconsistency, omission or difference and fails to report it to Valleywise Health, and if Contractor proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, it does so at its own risk.

4.4.8 In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to

Contractor's failure to so verify all such grades, elevations, locations, or dimensions shall be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review shall be reported promptly to Valleywise Health.

- 4.4.9 Contractor shall establish and maintain all construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona.
- 4.4.10 Contractor shall be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Valleywise Health and any Subcontractor or Sub - Subcontractor, including but not limited to any third-party beneficiary rights.
- 4.4.11 Contractor shall coordinate the activities of all Subcontractors. Contractor shall coordinate performance of the Work with Valleywise Health Project Manager and other involved departments or agencies within Valleywise Health. The Design Professional and other contractors or parties involved in the Project. If Valleywise Health performs other work on the Project or at the Site with separate contractors under Valleywise Health' control, Contractor agrees to cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 4.4.12 Contractor shall insure that all employees performing any Work for which Contractor is responsible have a legal right to live and work in the United States. Upon request by Valleywise Health, a copy of the Birth Certificate, Immigration and Naturalization Card, or Special Entry Permit shall be provided to the Valleywise Health Project Manager. In addition, all compensation of any such employee shall meet all applicable requirements of the Fair Labor Standards Act (FLSA) and Federal Minimum Wage laws.
- 4.4.13 Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of Valleywise Health. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier. If a Subcontract/Supplier selection plan has been approved by Valleywise Health, Contractor will follow that plan unless otherwise approved by Valleywise Health in writing.
- 4.4.14 Contractor shall not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to Valleywise Health, and receiving prior written approval of the change from Valleywise Health, which approval will not be unreasonably withheld.
- 4.4.15 Subcontractors may be required to furnish performance and payment bonds, or other performance insurance, if required in writing by Valleywise Health.
- 4.4.16 MAG Specification § 108.2(E), requiring a minimum amount of self-performance by Contractor for certain scopes of work, does not apply.

4.5 CONTROL OF THE PROJECT SITE

- 4.5.1 Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Valleywise Health to occupy the Project or a portion of the Project for its intended use.

- 4.5.2 Contractor shall take whatever steps, procedures or means necessary to prevent dust

nuisance due to construction operations, including, but not limited to, compliance with the provisions of Appendix 3 hereto. The dust control measures shall always be maintained to the satisfaction of Valleywise Health and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations. Any fines incurred for any dust related violation shall be paid by the Contractor.

- 4.5.3 To the extent required by applicable Laws, Regulations, or Legal Requirements, Contractor shall maintain Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities, including without limitation compliance with the 2010 regulations governing implementation of the ADA to the extent applicable. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, areas of refuge, and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to residents and the public.
- 4.5.4 Only materials and equipment used directly in the Work shall be brought to and stored on the Site by Contractor. When equipment is no longer required for Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. However, no materials shall be stored within any hospital, medical, clinical, in-patient, office or other facility or building.
- 4.5.5 Contractor agrees all persons working on the Site will always act in the best interest of the Project and will comply with all applicable rules and regulations reasonably set forth by Valleywise Health related to the Site. Notwithstanding the foregoing or anything in this Agreement to the contrary, Valleywise Health may remove from the Site any individual who Valleywise Health deems in their reasonable discretion to be creating a disturbance or causing any problem on the Site.
- 4.5.6 Contractor shall be responsible to Valleywise Health for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions.
- 4.5.7 Valleywise Health may conduct criminal, drive history, and all other requested background checks of Contractor and/or Subcontractor personnel performing Work or who have access to Valleywise Health' information, data, or facilities in accordance with Valleywise Health' current background check policies, and/or the provisions of the Project Specific Conditions. Any officer, employee or agent that fails to background check must be replaced immediately.
- 4.5.8 Valleywise Health shall have a final authority, based upon security reasons: (i) to determine when security clearance of Contractor's and/or Subcontractor's personnel is required; (ii) to determine the nature of the security clearance, up to and including finger printing personnel; and (iii) to determine whether or not any individual or entity may provide Services or perform Work under the Contract. If Valleywise Health objects to any personnel for any reasonable cause, then Contractor shall, upon notice from Valleywise Health, remove such individual from the Project.

4.6 PROJECT SAFETY

- 4.6.1 The Project and all Work performed in relation thereto is governed by applicable provisions of the federal laws, including but not limited to, the latest amendments of the following:
 - a. Williams-Steiger Occupational Safety & Health Act of 1970, Public Law, 91-596.
 - b. Part 1019 and Part 1926 — Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations.
 - c. Part 1518 — Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

- 4.6.2 Contractor is responsible for safety of the job site for employees of Contractor as well as for Valleywise Health staff members, patients, visitors, members of the public and others who may drive or walk through or be at the site. Valleywise Health has established written policies concerning safety, as well as other construction activities and/or requirements. Contractor shall comply with these policies, which are included in Appendix 1 to these General Conditions.
- 4.6.3 Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work and stored On-Site or Off-Site; and (iii) all other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and (iv) the owners or tenants of adjacent property and their patrons, employees and invitees.
- 4.6.4 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 4.6.5 Contractor shall provide a full or part-time certified safety officer as the "competent person" as required by O.S.H.A regulations and approved in writing by Valleywise Health. The "competent person" shall be identified at the Pre-Construction Conference with Valleywise Health advised in writing of any changes, and any changes must be preapproved in writing by Valleywise Health.
- 4.6.6 The "competent person" shall make routine daily inspections of the Site and shall hold safety meetings weekly or as required by Valleywise Health with Contractor's personnel, Subcontractors, and others as applicable.
- 4.6.7 Contractor and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any Valleywise Health specific safety requirements set forth in the Contract Documents, provided that such Valleywise Health-specific requirements do not violate any applicable legal and regulatory requirements.
- 4.6.8 Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Project Manager and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 4.6.9 Contractor's responsibility for safety under this Section 4 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- 4.6.10 As between Valleywise Health and Contractor, Contractor is responsible to Valleywise Health for all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards. Contractor's responsibility for review, monitoring, and coordination of the Subcontractor's safety programs shall not extend to direct control over execution of the Subcontractors' safety programs. Notwithstanding Contractor's safety obligations to Valleywise Health, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of other's work in areas designated to be controlled by such Subcontractor for purposes of workers compensation insurance coverage.
- 4.6.11 Nothing in this agreement shall relieve Contractor of his responsibility to maintain traffic,

structures, etc., as noted on the Plans, Specifications, and Project Specific Conditions. Contractor is responsible to provide all necessary shoring, bracing and trench support as is necessary to maintain traffic structures, etc., as stipulated in the Plans, Specifications, and Special Provisions. If the stability of adjoining building, walls, roadways, etc., is endangered by Contractor's excavation, shoring, bracing, or under pinning shall be provided as necessary to ensure project safety. Cost for shoring, bracing, underpinning, and trench support shall be included in the appropriate items listed in the Contract Price, and no additional payment shall be made for this work.

4.7 MATERIALS QUALITY, SUBSTITUTIONS, AND SHOP DRAWINGS

4.7.1 Quality Control and Quality Assurance Testing. All construction materials to be used or incorporated in the Project are subject to inspection, Quality Control & Quality Assurance Testing, and approval or rejection by Valleywise Health. Any material rejected by Valleywise Health shall be removed immediately and replaced in an acceptable manner to Valleywise Health at no additional cost to Valleywise Health. When QC/QA tests indicate noncompliance with the Contract Documents, retesting shall be performed by the same testing laboratory that performed the tests that indicated noncompliance.

4.7.1.1 Testing Materials, Articles, Equipment and Work. Valleywise Health has specified in the Contract specifications the materials, articles, equipment, or other work requiring tests. The CMAR shall deliver to the Site all materials, articles and equipment requiring tests in ample time before intended use to allow for testing. CMAR shall not use these prior to testing and receipt of written approval. CMAR shall be solely responsible for notifying Valleywise Health where and when materials, articles, equipment, and Work are ready for testing. Should CMAR cover any such materials, articles, equipment, or Work without testing and approval, if required, CMAR shall uncover them at CMAR's expense. Valleywise Health have the right to order the testing of any other materials, articles, equipment, or Work at any time during the progress of the Work. Unless otherwise directed, Valleywise Health shall take all samples for testing from materials, articles, or equipment for use on the Project or from Work performed. All tests will be under the supervision of, and at locations convenient to, Valleywise Health. Valleywise Health shall select the laboratories for all tests. The laboratories shall issue decisions regarding the adequacy of materials, articles, equipment, or Work to Valleywise Health in writing.

1. All costs of the initial required tests shall be borne by Valleywise Health. Valleywise Health may decide to take further samples and tests, and if the results show that the Work was not defective, Valleywise Health shall bear the costs of such samples and tests.
2. In the event the results of such additional samples and tests show that the Work was defective, CMAR shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of CMAR. All retesting costs may be back charged to CMAR by the Valleywise Health.

4.7.1.2 Rejection: Should any portion of the Work fail to comply with the requirements of the Contract, Valleywise Health may reject such Work, in writing, and CMAR shall immediately make the rejected Work satisfactory to the Architect and Valleywise Health, at no additional expense to Valleywise Health. CMAR shall immediately remove any rejected Work from the premises at CMAR's expense.

4.7.1.3 Offsite Testing: Valleywise Health shall bear the cost of offsite testing up to a distance of fifty (50) miles from the Project Site and up to one fabrication yard or manufacturing plant per manufactured item, for example, structural steel. If the cost of testing increases because the fabrication yard or manufacturing plant is located beyond this fifty-mile radius, then CMAR shall bear these increased costs. CMAR shall also bear the increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials.

4.7.1.4 Responsibility of Quality: The testing and inspection provided by Valleywise Health shall not relieve CMAR of its responsibility for the quality of materials and workmanship provided by CMAR, and CMAR shall make good all defective Work discovered during or after completion of the Project.

4.7.1.5 The cost for any testing required in the project Specifications, by permitting authorities or license authorities to be under the direction of a Professional Engineer shall be borne by

Valleywise Health. This Professional Engineer shall be registered in the State of Arizona and knowledgeable in Materials Testing. All requirements under Section 4.7 of the projects General Conditions shall apply for test performed under the direction of a Professional Engineer.

4.7.1.6 The Quality Control requirements contained in this section are in addition to and separate from Quality Assurance Testing, which will be performed by Valleywise Health or its representative. If the Quality Assurance test results are not in agreement with the Quality Control test results, the Contractor shall have the option to retain a third-party consultant for referee tests. The third-party consultant shall meet the same requirements as the consultant performing the Quality Control Testing. The results of the third party shall be binding. All cost incurred by the referee testing shall be the Contractor's expense. If the Contractor elects not to retain a third party for referee testing, Valleywise Health test results shall prevail.

4.7.2 Substitutions

4.7.2.1 Substitutions prior to bid, proposal, or submittal of the GMP will only be considered if in compliance with Arizona Revised Statute §34-104.

4.7.2.2 Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number: Unless it is indicated in the Contract Documents that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:

4.7.2.3 Requests for substitution shall be submitted by Contractor in writing to Valleywise Health and approved in writing by Valleywise Health prior to Contractor implementing the substitution.

4.7.2.4 Contractor shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

4.7.2.5 The Submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.

4.7.2.6 The Submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the Submittal shall include any adjustment in the Contract Time created by the substitution.

4.7.2.7 Unless otherwise directed in writing by Valleywise Health, Contractor shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

4.7.2.8 Valleywise Health will make the final decision and will notify Contractor in writing as to whether the substitution has been accepted or rejected.

4.7.2.9 If Valleywise Health does not respond within fifteen (15) working days, Contractor shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

4.7.3 Shop Drawings

4.7.3.1 Contractor shall prepare and submit Shop Drawings which show details of all work to ensure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.

4.7.3.2 A schedule of Shop Drawing shall be submitted with the Project Schedule for Valleywise Health approval that voids bulk submissions to the extent reasonably possible. The schedule of Shop Drawing submissions shall include all the items for which Shop Drawings are required by the Contract Documents, including the Specifications.

4.7.3.3 Shop Drawings shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- a. All working and erection dimensions.
- b. Arrangements and sectional views.
- c. Necessary details, including complete information for making connections between work under the Contract and work under other Contracts.
- d. Kinds of materials and finishes.
- e. Parts list and description thereof.

4.7.3.4 Each Drawing or page shall include:

- a. Project Name, Valleywise Health Project Number, and descriptions.
- b. Submittal date and space for revision dates.
- c. Identification of equipment, product, or material.
- d. Name of Contractor and Subcontractor.
- e. Name of Supplier and Manufacturer.
- f. Relation to adjacent structure of material.
- g. Physical dimensions clearly identified.
- h. ASTM and Federal Specifications references.
- i. Identification of and justification for deviations from the Contract Documents.
- j. Contractor's stamp, initialed or signed, dated, and certifying the review of submittal, certification of field measurements and compliance with Contract.
- k. Location at which the equipment or materials are to be installed.

4.7.3.5 Location shall mean both physical location and location relative to other connected or attached material. Valleywise Health will return unchecked any submittal, which does not contain complete data on the work and full information on related matters.

4.7.3.6 Stock or standard drawings will not be accepted for review unless full identification and supplementary information is shown thereon in ink or typewritten form.

4.7.3.7 Contractor shall schedule, prepare and submit all Shop Drawings in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the work.

4.7.3.8 If the Shop Drawings show departures from the Contract requirements, Contractor shall make specific mention thereof in the Letter of Transmittal; otherwise review of such submittals by Valleywise Health shall not constitute review of the departure. Review of the drawings shall constitute review of the specific subject matter for which the drawings were submitted and not of any other structure, material, equipment, or apparatus shown on the drawings.

4.7.3.9 The review of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract. No construction called for by Shop Drawings shall be initiated until such drawings have been reviewed and approved by Valleywise Health.

4.7.3.10 The procedure for seeking review of the Shop Drawings shall be as follows:

- a. Contractor shall submit complete sets of Shop Drawings and other descriptive data per the procedures established by Valleywise Health.

After Contractor's submittal or resubmittal of Shop Drawings, if Contractor has submitted Shop Drawings in accordance with the Valleywise Health -approved submittal schedule, or upon resubmission, Valleywise Health shall be provided with seven (7) calendar days for review. Should Valleywise Health require additional review time above and beyond the seven (7) calendar days, Contractor may ask for a time extension and/or monetary compensation, if they can present valid, factual evidence that actual damages were incurred by Contractor. Valleywise Health shall determine the amount of the time extension and/or the monetary compensation to be awarded Contractor, if any.

- b. Valleywise Health will not review submittals or resubmittals of Shop Drawings until after Contractor and Design Professional have reviewed and approved the Shop

Drawings.

- 4.7.4 Reuse. Any requests or proposals for reuse of materials shall be submitted and processed as provided in Section 4.7.2 above.
- 4.7.5 Long Lead Time Items. Contractor shall submit Shop Drawings, as required by the Project Manager, on all long lead items to be furnished and installed as part of the project within ten (10) days after execution of the Contract. In addition, Contractor shall order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved Shop Drawings. For all long lead times for which shop drawings are not required, Contractor shall order said long lead items within fifteen (15) days after execution of the Contract. Within two (2) days after ordering long lead items, Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.
- 4.7.6 Contractor shall be responsible for all extra costs incurred by Valleywise Health caused by Contractor's failure to comply with the procedures outline above in this Section 4.7.
- 4.8 PROJECT RECORD DOCUMENTS (This Section should match up with Vanir's BIM review.)**
- 4.8.1 During the construction period, Contractor shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for inspection purposes. Contractor shall also maintain an electronic set of current Drawings and Specifications during the construction phase of the Project updated with all changes noted as they occur. Project Record Documents will be made available to the entire project team via Box, or other format approved by Valleywise Health in writing, including but not limited to: Addendums, ASI's), PR's, RFI's and Submittals.
- 4.8.2 Contractor shall update these drawings to indicate the actual installation where the installation varies from the original Construction Documents. Contractor shall give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
- a. Dimensional changes to the Drawings.
 - b. Revisions to details shown on Drawings.
 - c. Locations and depths of underground utilities.
 - d. Revisions to routing of piping and conduits.
 - e. Actual equipment locations.
 - f. Changes made by Change Order or Addendum.
 - g. Details not on original Contract Drawings.
- 4.8.3 Contractor shall mark completely and accurately Project Record Drawing sets of Construction Documents.
- 4.8.5 Contractor shall update the Project Record Documents with hyperlinks to all Addendums, ASI's, PR's, RFI's and applicable Submittals.
- 4.8.6 Contractor shall submit Project Record Documents to Valleywise Health or its representative for review and comment.
- 4.8.7 Upon receipt of the reviewed Project Record Drawings from Valleywise Health, Contractor shall correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to Valleywise Health prior to Final Acceptance and as a condition of Final Acceptance.
- 4.8.8 Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and shall be the sole judge of acceptance of these drawings.
- 4.9 WARRANTY AND CORRECTION OF DEFECTIVE WORK**
Contractor warrants to Valleywise Health that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and the plans and specifications and all other terms and conditions of the Contract

Documents, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. The date noted on the Certificate of Substantial Completion shall be the beginning of the Warranty period, irrespective of early completion by some Subcontractors of their work. Contractor shall furnish extended warranties for facilities placed in service before Substantial Completion and that expire no earlier than one year beyond Substantial Completion, except as otherwise required in the Contract Documents.

- 4.9.1 Contractor's warranty obligation shall be in accordance with MAG Specifications.
- 4.9.2 In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors shall provide to Valleywise Health all the following written warranties that apply to the Work, in a form acceptable to Valleywise Health.
 - a. General Warranty — Two (2) years
 - b. Roofing Manufacturer — Twenty (20) years
 - c. Exterior Metal Wall System Installer — Two (2) years
 - d. All Applicable Manufacture Warranties per specifications
- 4.9.3 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides Valleywise Health with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide Valleywise Health with all manufacturers' warranties prior to Final Acceptance.
- 4.9.4 Contractor agrees that it shall be responsible to manage and administer the correction of any Work that is not in conformance with the Contract Documents during the warranty periods set forth in Section 4.9, or during any longer periods to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by Valleywise Health, shall not constitute acceptance of Work not in accordance with the Contract Documents.
- 4.9.5 When notified of a warranty issue, Contractor shall respond in writing within 48-hours and shall perform warranty work as soon as material for said repairs are available (as judged solely by Valleywise Health), and in any event Contractor shall, take immediate steps to commence and complete correction of nonconforming Work no later than the time period set forth in Valleywise Health written notification in accordance with the MAG Specifications. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If defects develop which are determined by Valleywise Health to be an emergency, Valleywise Health shall notify Contractor, via the most expeditious means regarding the nature and condition of the defects. In turn, Contractor shall immediately dispatch necessary forces to correct the defect or the emergency condition in accordance with MAG Specifications.
- 4.9.6 The time periods referenced in this Section apply only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies that Valleywise Health may have regarding Contractor's other obligations under the Contract Documents.
- 4.9.7 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to Valleywise Health all warranties for any portion of the Project offered by the manufacturer, installer, or provider thereof. Valleywise Health and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.9.9.
- 4.9.8 Contractor's warranty excludes damages or defects caused by abuse, alterations to the Work not executed by or through Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.
- 4.9.9 Contractor shall provide a warranty contact protocol and contact information list in the form required by Valleywise Health for all warranties, which must be accepted in writing by

Valleywise Health for the Project, and Contractor will provide Valleywise Health prompt written notice of any change in the protocol and/or notice contact information.

- 4.9.10 One (1) Year Inspection. Upon request of Valleywise Health, and prior to the expiration of one (1) year from the date of Substantial Completion, the Project Team shall, without additional compensation, conduct a meeting with Valleywise Health to review the facility operations and performance, and compliance with the Contract Documents and to identify any warranty, defect, and/or performance issues. During the Site inspection the Project Team will note any deficiencies, noncompliance and/or other concerns observed in the Project, including failure to meet maintenance requirements, if observed, and a written report will be generated by the Project Team.

4.10 Valleywise Health' PERFORMANCE OF NECESSARY WORK

- 4.10.1 During construction of the Project, if Contractor fails to comply with a request of Valleywise Health to perform required Work, or is unable to comply with said request, and it is necessary for Valleywise Health (utilizing its own forces and/or another contractor(s)) to do work that is normally Contractor's responsibility, Valleywise Health shall be entitled to bill and collect from Contractor for the full cost thereof. Each incident requiring work by Valleywise Health forces shall be covered by a separate billing from Valleywise Health to Contractor.
- 4.10.2 The amount of each billing for Valleywise Health performed Work shall be either \$250, the actual accumulated charges for the time, materials, and equipment, or the amounts charged by outside contractor or contractors, whichever is greater. Valleywise Health employees' time will be billed at everyone's hourly rate plus the applicable Valleywise Health overhead rate. Any materials used will be billed at cost. Equipment rates will be based on the most recent schedule of equipment rental rates for force account work, applicable under the Contract Documents.
- 4.10.3 Contractor shall pay Valleywise Health for the amount billed for Valleywise Health performed work, or at Valleywise Health' option, the amounts billed may be deducted from any payments due Contractor from Valleywise Health.

SECTION 5 — Valleywise Health RESPONSIBILITIES

5.1 Valleywise Health PROJECT MANAGER AND INSPECTORS

- 5.1.1 Project Manager is responsible for providing Valleywise Health-supplied information and approvals in a timely manner to assist Contractor to fulfill its obligations under the Contract Documents.
- 5.1.2 Project Manager will also provide Contractor with prompt notice when it observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the Project or nonconformance with the drawings and specifications.
- 5.1.3 Valleywise Health may utilize Field Inspectors to assist Project Manager during construction in observing performance of Contractor. Valleywise Health' use of Inspectors is for the purpose of assisting Project Manager and such Field Inspectors are not acting in a regulatory or any other capacity.
- 5.1.3.1 The Inspectors are authorized to inspect all Work and materials furnished. Such inspections may extend to all or part of the Work and to preparation, fabrication, or manufacture of the materials to be used.
- 5.1.3.2 The Inspectors shall have the authority to issue instructions contrary to the Construction Documents if approved and coordinated with the directions of Project Manager.
- 5.1.3.3 The Inspectors shall have the authority to reject work or materials until any questions at issue can be decided by Project Manager.
- 5.1.3.4 The use of Inspectors by Valleywise Health shall not make Valleywise Health responsible for or give Valleywise Health control over construction means, methods, techniques, sequences or

procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the work in accordance with Contract Documents. The Inspectors are not authorized to direct any of Contractor's activities, employees, or Subcontractors.

- 5.1.3.5 Contractor shall be responsible for correcting, at no cost to Valleywise Health, any deficiencies identified by such Inspectors and shall bear the expense of any additional inspection, testing and/or reinspection's resulting from any such deficiencies.

5.2 DESIGN PROFESSIONAL SERVICES

Valleywise Health may contract separately with one or more Design Professionals to provide construction administration of the Project. The Design Professional's Contract, as well as other firms hired by Valleywise Health shall be furnished to Contractor. Contractor shall not have the right to limit or restrict or reject any Contract modifications that are mutually acceptable to Valleywise Health and Design Professional.

5.3 Valleywise Health' SEPARATE CONTRACTORS

Valleywise Health is responsible for all work performed on the Project or at the Site by Separate Contractors retained by Valleywise Health. Valleywise Health shall contractually require its Separate Contractors to reasonably cooperate with, and reasonably coordinate their activities so as not to interfere with Contractor to enable Contractor to timely complete the Work consistent with the Contract Documents. Contractor shall immediately notify the Project manager and address the matter in the next monthly status report pursuant to Section 6.2.4, if any activities of such Separate Contractors are expected to interfere, or are interfering, with Contractor and such interference will or could result in any delay in Contractor's performance of the Work.

5.4 PERMIT REVIEW AND INSPECTIONS

- 5.4.1 If requested by Contractor, Project Manager will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
- 5.4.2 Contractor shall keep a log of: (a) permits to be obtained, and obtained, including from which regulatory authority, permit number and date; and (b) inspections performed, including inspecting authority, date, and outcome.
- 5.4.3 Valleywise Health may utilize a third-party inspection and permitting agent (such as Maricopa County) and Contractor shall cooperate and coordinate all permitting and inspection activities with such agent.
- 5.4.4 Contractor shall provide at least 48-hours written notice to the Project Manager and the Design Professional providing construction management services of any upcoming inspections and when portions of the Work are ready for inspection. Expected inspections dates shall be incorporated into one-month and three-month schedules.
- 5.5.5 The regulating agencies of Valleywise Health, such as Development and Sustainability, Fire and Planning Departments, enforce Laws, Rules or Legal Requirements. The enforcement activities of Valleywise Health are independent and separate from this Agreement.

5.5 PLANS AND SPECIFICATIONS TO THE CONTRACTOR

Contractor shall be provided with an electronic set of plans and specifications at no cost from Valleywise Health, unless otherwise specified in the Contract or bid documents.

SECTION 6 — CONTRACT TIME

6.1 CONTRACT TIME

- 6.1.1 The Contract Time shall start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth in Section 6.4 below.
- 6.1.2 Beginning on the date of the NTP, Contractor shall begin to fulfill Contractor's obligations under

the Contract. Contractor's obligations include providing Valleywise Health and other agencies with any submittals required by the Project Specific Provisions, including but not limited to, an approved Project Schedule, Traffic Control Plans, and a Stormwater Pollution Prevention Plan, if required. Contractor shall submit all such required submittals before any physical construction work commences on the Site. NTP does not authorize construction work until all contract insurance, bonds, and schedules are submitted to and accepted by Valleywise Health.

6.1.3 The Contract Time shall be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time, subject to extensions as provided in MAG Specification §108.7.

6.1.4 Time is of the essence of the Contract, for the Project, for the Work, and for each phase and/or designated Milestone thereof.

6.2 PROJECT SCHEDULE

6.2.1 The Project Schedule shall be updated and maintained throughout the Contract Time.

6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by Valleywise Health

6.2.3 An updated Project Schedule shall be submitted monthly to Valleywise Health as part of the Payment Request. The monthly submittal shall include the entire schedule in an electronic file containing the schedule in a format acceptable to Valleywise Health. In addition, Contractor shall, upon request by Valleywise Health, provide a copy of all submitted schedule data in an electronic file in a format acceptable to Valleywise Health. Each file shall be clearly labeled with the project description, scheduling program name and version number, and schedule print/data date.

6.2.4 Contractor shall provide Valleywise Health with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.

6.2.5 With each Project Schedule submittal, Contractor shall include a transmittal letter including the following:

- a. Description of problem tasks, referenced to field instructions or requests for information (RFIs), as appropriate.
- b. Current and anticipated delays including:
 - Cause of the delay.
 - Corrective action and schedule adjustments to correct the delay.
 - Known or potential impacts and their delay on other activities, Milestones, and their impact on the Substantial Completion and Final Completion dates.
- c. Changes in construction sequence.
- d. Pending items and status thereof including but not limited to:
 - Time Extension requests.
 - Substantial Completion date status.
 - Final Completion date status.
- e. If ahead of schedule, the number of calendar days ahead.
- f. If behind schedule, the number of calendar days behind.
- g. Estimated cash flow and required payments monthly for the remainder of the Project in a format required by Valleywise Health to asset MISH in its financial forecasting.
- h. Other Project or scheduling concerns.

- 6.2.6 Valleywise Health' review of and response to the Project Schedule is for the purpose of: (1) Valleywise Health planning and staffing for the Project as may be required from time to time; (2) ensuring Contractor's general conformance with the scheduling requirements of the Contract Documents and completion of the Project within the Contract Time; and (3) monitoring and evaluating the construction status for purposes of approving monthly progress payments. Acceptance of a submitted schedule by Valleywise Health should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of Contractor. Valleywise Health' review shall not relieve Contractor from compliance with the requirements of the Contract Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.
- 6.2.7 The Project Schedule shall show Milestones, including Milestones for Valleywise Health-furnished information, and shall include activities for Valleywise Health-furnished material and construction by other contractors when those activities are interrelated with Contractor activities
- 6.2.8 The Project Schedule shall consider Valleywise Health' use of portions of the Project during Contract Time and prior to Final Acceptance.
- 6.2.9 Critical Path Method (CPM)
- 6.2.9.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.
- 6.2.9.2 The CPM diagram schedule shall be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
- 6.2.9.3 The CPM diagram schedule shall indicate all relationships between activities.
- 6.2.9.4 The activities making the Project Schedule shall contain sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluation the progress of the Work. Individual activities shall not exceed fifteen (15) days in length, in most cases.
- 6.2.9.5 The CPM diagram schedule shall be based upon activities, which coincide with the schedule of values.
- 6.2.9.6 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 6.2.10 Float Time
- 6.2.10.1 The total Float Time within the overall schedule is for the exclusive use of Valleywise Health, but Valleywise Health may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.
- 6.2.10.2 Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, tec. No time extensions will be granted nor

delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.11 Valleywise Health-Caused Delays. Valleywise Health-caused delays on the Project, if any, may be offset by Valleywise Health-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in savings of time to Contractor, etc.) In such an event, Contractor shall not be entitled to receive a time extension or delay damages until all Valleywise Health-caused time savings are exceeded and the Contract Time is also exceeded.

6.2.12 Weather-Related Delays. Contractor is required, in preparing the Project Schedule to take into account all relevant weather conditions, including normal rainfall, winds, weather events (*i.e.*, Haboobs), etc., and distribution. No additional compensation shall be given for any weather-related delays or impacts on the Work or the Project Schedule. No time extension will be granted in the Project Schedule unless the weather during the construction of Work is unusually severe, was not reasonably anticipated, and the total rainfall,

wind, etc. was significantly in excess of the normal rainfall for the Project Site location. Normal weather (including rainfall and winds) for the Project will be determined from the 10-year average rainfall for the Site as measured by the National Oceanic and Atmospheric Administration or comparable source of reliable information for rainfall and/or other weather events in the City, Town, or locale where the Project is located in Arizona. In addition, the excessive rainfall, winds, or other weather must have actually impacted Work activities on the Critical Path and caused delay beyond any remaining Float at the time of the weather-caused delay. The burden of documenting normal weather, the excessive weather and the impact on Critical Path activities is on Contractor. All other provisions in the Contract Documents relating to claims, including without limitation notice requirements, apply to any claim by Contractor for a weather delay.

6.3 SUBSTANTIAL COMPLETION

6.3.1 When Contractor considers that the Work, phase or a portion thereof, which Valleywise Health agrees to accept separately, is substantially complete, Contractor, in conjunction with the Inspector, shall prepare and submit to the Project Manager a comprehensive Punch List of items to be completed or corrected prior to Final Acceptance and Final Payment. Failure to include an item on such Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.

6.3.2 Upon receipt of Contractor's Punch List, Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. Project Manager may, at Project Manager's sole option, be assisted in such inspection by the Design Professional for the Project. If the inspection by the Project Manager discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that Valleywise Health can occupy or utilize the Work, phase or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Project Manager. In such case, Contractor shall then submit a request for another inspection by Project Manager to determine Substantial Completion.

6.3.3 Certificate of Substantial Completion.

The Project Manager shall not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by Valleywise Health for its intended purpose, including it is ready to be opened to the general public, fully occupied or used by Valleywise Health (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full-operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed

in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. A minor amount of Work, as determined by and at the discretion of the Project Manager, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed as a result of weather conditions, will not delay determination of Substantial Completion. If prior written approval is obtained from Valleywise Health for purposes of Substantial Completion, specified areas of the entire Work or Project may be individually certified as Substantially Complete. In no event shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable) and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by Valleywise Health, subject only to the Punch List Items. The warranty period begins on Substantial Completion date noted in the Certificate of Substantial Completion.

- 6.3.4 If requested by Valleywise Health, Contractor shall complete and turn-over to Valleywise Health the Project on a phased basis. Each phase shall have a separate inspection by the Project Manager, a Punch List generated, and then an inspection by Valleywise Health with final approval and acceptance only after the Project Manager's Punch List.

6.4 FINAL ACCEPTANCE AND FINAL COMPLETION

- 6.4.1 Unless otherwise expressly agreed to in writing by Valleywise Health, Final Completion must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Completion will be a material breach of the Contract.
- 6.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, Valleywise Health and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued, and Final Completion shall not occur until all items of work, including Punch List Items, have been completed to Valleywise Health's satisfaction as reflected in the written Final Acceptance.
- 6.4.3 Final Payment under Section 8.4 below shall not be due, owing, or paid by Valleywise Health until Final Completion is obtained.

6.5 CONTINUATION OF WORK

- 6.5.1 Permitting Contractor to continue and finish the Work or any part of it after the time fixed for its completion (whether Milestone, phase, Substantial Completion or Final completion) or after the date to which the time fixed for any completion may have been extended, does not operate as a waiver by Valleywise Health of any rights under the Contract Documents, law or equity.
- 6.5.2 Furthermore, the timely completion of the Work being of the utmost importance under the Contract, notwithstanding the existence of one or more disputes between the parties concerning the scope of the Work, the Project Schedule, Contract Time, payments or any other matter, and further notwithstanding a party's invocation of the Dispute Resolution provisions specified in Section 13 of these General Conditions, unless Valleywise Health suspends the Contract or Contractor's performance pursuant to Section 10.1 of these general Conditions, Contractor will continue to prosecute the Work, including any Change Order work or Extra Work Orders, in a diligent and timely manner and not stop, slow down or impede by action or inaction the progress of the Work, including commencing performance of and thereafter completing any additional work called out in any Change Order or Extra Work Order issued by Project Manager with the approval of Valleywise Health, so long as Valleywise Health makes payment to

Contractor in accordance with Section 8 of these General Conditions.

SECTION 7 — CONTRACT PRICE

7.1 FIXED PRICE CONTRACTS

7.1.1 The Contract Price for all Fixed Price Contracts shall be the amount set forth in the Contract.

7.1.2 The Contract price may only be changed as set forth in Section 9 below.

7.2 UNIT PRICE CONTRACTS

7.2.1 The Contract Price for all Unit Price Contracts shall be the amount set forth in the Contract or Change Order multiplied by the verified quantity provided.

7.2.2 Measurements of quantities to determine the total Contract Price shall be in accordance with MAG Specification §§ 109.1 and 109.2.

7.2.3 The Unit Price may only be changed as set forth in Section 9 below.

7.3 COST BASED CONTRACTS (GMP OR TIME AND MATERIALS)

The Contract Price for all Contracts based upon payment of the Cost of the Work plus a Fee with a GMP, or time and materials shall be subject to the provisions of Section 15.2 below.

7.4 CHANGE ORDERS

7.4.1 Fixed Price Change Orders: The Change Order Price for all Fixed Price Change Orders shall be the amount agreed to in the Change Order.

7.4.2 Cost Plus Change Orders: The Change Order Price for all Change Orders which are agreed based upon a Cost-Plus basis, will be determined in accordance with Section 15.2 below.

7.4.3 Unit Price Change Orders: The Change Order Price for all Unit Price Change Orders shall be the amount set forth in the Change Order multiplied by the verified quantity provided.

7.4.4 Measurements of quantities to determine the total Change Order Price shall be in accordance with MAG specifications §§ 109.1 and 109.2.

7.4.5 The Unit Price may only be changed as set forth in Section 9 below.

7.4.6 MAG Specification § 109.4.1 is modified as follows:

Before § 109.4.1, the following is added:

Any deduction or increase in the Contract Price must be supported by a signed, written Change Order fully executed by Valleywise Health, and supported by such backup as the Project Manager may require. No adjustments in any Unit Prices will be allowed.

7.5 TAXES

Contractor is required to pay all taxes applicable to any contracting activity done for the Valleywise Health, and this cost shall be included in all Contract Prices.

SECTION 8 — PAYMENT

8.1 PAYMENT FOR PRE-CONSTRUCTION SERVICES

Payments for Pre-Construction Services, if any, will be made pursuant to Section 17.8.

8.2 PAYMENT FOR CONSTRUCTION SERVICES

8.2.1 Payment for the Work will be made in accordance with MAG Standard Specification § 109 as amended below.

- 8.2.2 In MAG Standard Specifications Section 109.7 (A), replace the first paragraph of the subsection with the following:

Valleywise Health will make monthly progress payments during the course of the contract. The payments (estimates of work completed) will be prepared by Contractor on forms provided by Valleywise Health and approved by Project Manager in accordance with Section 8.2.2 of the General Conditions. The payment cycle will start with the date of the Notice to Proceed. Valleywise Health may process payments more frequently if requested by Contractor and agreed to in writing by Valleywise Health.

- 8.2.2.1 The payment process functions as follows: Prior to the payment cycle date, Contractor shall send a Contractor Payment Request Form to Project Manager. The Project Team shall review the Contractor Payment Request Form and agree upon any necessary adjustments. Contractor shall certify the final Contractor Payment Request Form by signing and returning to the Project Manager.

When approved by the Project Manager, the progress payment shall be processed for payment of any approved amounts within fourteen (14) days (except final payments).

- 8.2.2.2 Payments shall be made pursuant to A.R.S. § 34-609.

- 8.2.2.3 When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-609(B)(3), subject to all of Valleywise Health' rights to withhold or offset payments, and/or other rights of Valleywise Health, under the Contract.

- 8.2.2.4 Valleywise Health reserves the right under A.R.S. § 34-609(B)(3) to reinstate the ten percent (10%) retention if Valleywise Health determines that satisfactory progress is not being made.

- 8.2.3 The second, third, and fourth paragraphs of MAG Standard Specification § 109.7 shall remain as written.

8.3 PAYMENT UPON SUBSTANTIAL COMPLETION

- 8.3.1 No payment will be made upon Substantial Completion, except for a regularly scheduled monthly progress payment, as allowed by Section 8.2.2.

- 8.3.1.1 No further payments will be made to Contractor until Final Completion.

8.4 FINAL PAYMENT

- 8.4.1 Subject to all of Valleywise Health' rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after: (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by Valleywise Health; (ii) any excess materials and supplies necessary for matching materials and supplies incorporated into the Work and the excess stock required by Valleywise Health in the Contract Documents; (iii) all necessary operating manuals and complete "as-built" drawings, plans and specifications in compliance with the BIM Performance Requirements set forth in Appendix 2, as otherwise required by Valleywise Health and/or the Contract Documents have been delivered to Valleywise Health, as specified in this Section 8.4; (iv) full and conditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered by Contractor to Valleywise Health; (v) all conditions and requirements imposed by Valleywise Health or any financing entity for the corresponding disbursement have been met;(vi) if required under the Contract Documents, commissioning of the Project has been completed in compliance with Appendix 4; and (v) Contractor delivers to Valleywise Health a Contractor Payment Request Form requesting Final Payment.

- 8.4.2 In addition, Contractor shall compile a complete equipment list and maintenance manual to be submitted to Valleywise Health as a precondition to Final Payment. The list shall include the following items for all equipment supplied under the Plumbing, Electrical, Air Conditioning, Elevator, and other Special Equipment Specifications.
- a. Name, Model and Manufacturer.
 - b. Complete parts lists and drawings.
 - c. Local source of supply for replacement parts along with suppliers' telephone numbers.
 - d. Local service organizations serving the equipment and their telephone numbers.
 - e. All tags, inspection slips, instruction packages, etc., removed from equipment shall be properly identified as to pieces of equipment from which they were taken.

8.4.3 Contractor shall also deliver to Valleywise Health not less than five (5) days prior to Final Completion of the Work: (i) one (1) digital (in the format specified by Valleywise Health and in BIM Performance Requirements set forth in Appendix 2); , (ii) one digital (in a format required by Valleywise Health) and (1) hard copy, of any applicable Maintenance manuals; and (iii) all commissioning documentation required under the Contracts Documents and Appendix 4. Each manual shall include all manufacturer's operation and maintenance instructions and "as-built" drawings with the list herein specified. It shall also include all other diagrams and instructions necessary to properly operate and maintain the equipment, the name, address and telephone number of Contractor and all Subcontractors involved.

8.5 Valleywise Health' RIGHT TO WITHHOLD PAYMENT

Valleywise Health may withhold payment to such extent as may be necessary in Valleywise Health' opinion to protect Valleywise Health from loss for which Contractor is responsible, including, without limitation, if any of the following conditions exist:

- 8.5.1 Defective Work not remedied.
- 8.5.2 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Valleywise Health is provided by Contractor.
- 8.5.3 Failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment.
- 8.5.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price.
- 8.5.5 Damage to Valleywise Health or another Contractor.
- 8.5.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
- 8.5.7 Failure to carry out the Work in accordance with the Contract Documents: or
- 8.5.8 Contractor is in default of any of its other obligations under the Contract Documents.

8.6 JOINT/DIRECT CHECKS

Payments to Contractor may be made by checks payable jointly to Contractor and its employees, agents, subcontractors and suppliers, or any of them, and when in the sole opinion of Valleywise Health it is advisable, payments may be made directly to Contractor's Subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under the Contract.

8.7 PAYMENT NOT A WAIVER

No payment (nor use or occupancy of the Project by Valleywise Health) shall be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of Valleywise Health.

8.8 LIENS AND BOND CLAIMS

Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as Valleywise Health may require. Contractor shall pay when due all claims arising out of performance of the Work covered by the Contract for which a lien may be filed either against the real estate or leasehold interest of Valleywise Health, or against payments due from Valleywise Health to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of Valleywise Health, against payment due from Valleywise Health to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of the Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual

knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless Valleywise Health from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

8.9 FINANCIAL RECORD KEEPING AND Valleywise Health' AUDIT RIGHT

8.9.1 Records for all Contracts between Valleywise Health and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any Valleywise Health' representative or any outside representative engaged by Valleywise Health for the purpose of examining such records. Valleywise Health or its designee may conduct such audits or inspections throughout the term of the Contract and for a period of five years after Final Payment or longer if required by law. Valleywise Health' representatives may (without limitation) conduct verifications such as counting employees at the Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

8.9.2 Contractor's "records" shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Valleywise Health' judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to Valleywise Health or the Project in connection with Contractor's dealings with Valleywise Health or the Project (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- a. Compliance with Contract requirements for deliverables.
- b. Compliance with approved Plans and Specifications.
- c. Compliance with § 14.9 below.
- d. Compliance with Contract provisions regarding the pricing of Change Orders.
- e. Accuracy of Contractor representations regarding the pricing of invoices; and/or
- f. Accuracy of Contractor representations related to claims submitted by Contractor or any of their employees.

8.9.3 Contractor shall require all payees (examples of payees include Subcontractors, Suppliers,

Insurance Carriers, etc.) to comply with the provisions of this Section by including the requirements hereof in a written Contract Agreement between Contractor and payee. Contractor will ensure that all payees (including those entering lump sum contracts) have the same right to audit provisions contained in the Contract included in their contracts with Contractor.

- 8.9.4 Valleywise Health authorized representative(s) (including, without limitation, Project Manager) shall have reasonable access to Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of the Contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Section.
- 8.9.5 If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to Valleywise Health (of any nature) by Contractor and/or Contractor's Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of Valleywise Health audit shall be reimbursed to Valleywise Health by Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Valleywise Health findings to Contractor.
- 8.9.6 In addition to the normal paperwork documentation Contractor typically furnishes to Valleywise Health, Contractor agrees to furnish, upon written request from Valleywise Health, any of the documentation necessary for Valleywise Health to exercise its audit rights under this Section 8.9 in computer readable file formats (Word, Excel, or .pdf), as Valleywise Health may designate.
- 8.9.7 Valleywise Health, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at Valleywise Health discretion, within three (5) years of Final Acceptance of the Work.

SECTION 9 — CHANGES TO THE CONTRACT

9.1 EXTRA WORK/CHANGES IN THE WORK

- 9.1.1 Valleywise Health reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change as set forth in a written Change Order shall be deemed a part of the Contract as if originally incorporated herein.
- 9.1.2 In the event Valleywise Health and Contractor cannot agree on the terms of a Change Order, or when circumstances otherwise require, the Project Manager has the authority to direct the Contractor to perform extra work, if the work in question is an item not provided for in the Contract as awarded. The Project Manager shall have the authority to determine, based upon factual evidence presented by the Contractor, whether the work in question is an item not provided for in the Contract as awarded. If the Project Manager directs the Contractor to perform extra work, the Project Manager's instructions shall include a price that the Contractor cannot exceed in charging Valleywise Health for the extra work. Upon receipt of the Project Manager's directions to perform extra work, the Contractor shall promptly proceed with the extra work and document the actual cost thereof. Contractor's right to payment for extra work shall be determined under subsection 9.1.4(d) below. The Contractor is responsible to manage the extra work to ensure that the price limits set by the Project Manager are not exceeded. Contractor shall perform the extra work and submit documentation for the actual cost of the extra work to Valleywise Health. A Change Order will be issued to cover this work.
- 9.1.3 Contractor shall not be entitled to payment for extra work unless a written Change Order, in form and content prescribed by Valleywise Health, has been executed by Valleywise Health. On all requests for Change Orders, Contractor shall specify the increased and/or decreased costs and whether it believes any extensions of time will be necessary to complete its Work as modified by the Change Order. If extra work is performed under subsection 9.1.2 above, a corresponding Change Order shall be prepared, approved, and processed by Valleywise Health

before payment can be made to Contractor.

9.1.4 In general, pricing for Change Orders shall include the same mark-up percentages that were in effect when the Contract was awarded. The cost or credit to the Valleywise Health resulting from a change in the Work shall be determined, based on the type of pricing for the Contract involved, as follows:

- a. by mutual acceptance of a lump sum properly itemized in a form acceptable to Valleywise Health.
- b. by unit prices stated in the Contract Documents.
- c. when the Valleywise Health determines that a Unit Price Book Job Order associated with a Job Order Contract requires a Change Order, by using the same Total Cost Data and CCI that are in effect when the Change Order is anticipated to be issued; or
- d. by actual cost and a percentage fee covering overhead and profit, as follows:
 - (i) Contractor shall perform the extra work and be compensated for actual cost of labor, materials, and equipment.
 - (ii) Contractor shall have the right to add the fee percentage applicable to the Work under the Contract, or if no such fee has been agreed to by the parties, not more than five percent (5%) to the Subcontractor's prices for authorized extra work performed solely by Subcontractors. Such percentage shall include all of Contractor's charges for overhead, profit, administration, and supervision.
 - (iii) Contractor shall have the right to add the fee percentage applicable to Work under the Contract for self-performed extra work, or if no such fee has been agreed to by the parties, Contractor's maximum total allowable additions for overhead, profit, administration and supervision shall not exceed ten percent (10%) of actual verifiable labor, materials and equipment for such self-performed extra work.

9.1.5 Any agreement which modifies the terms of the Contract (including Change Orders) shall be approved in writing by the Project Manager. Once properly executed by both parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

9.2 ACCURACY OF CHANGE ORDER PRICING INFORMATION

9.2.1 Subject to §§ 9.2.2 through 9.2.4, signature by the contracting parties shall constitute full accord and satisfaction between Valleywise Health and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order or other modification of the Contract agreed to in writing.

9.2.2 Accurate Change Order Pricing Information: Contractor agrees that it is responsible for submitting accurate cost and pricing data to Valleywise Health to support its Fixed Price, Unit Price, and/or Cost-Plus Change Order Proposals or other Contract price adjustments under the Contract. Contractor further agrees to submit Change Order proposals with cost and pricing data, which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on Change Orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a Subcontractor or a Material Supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the Approved Change Order work.

9.2.3 Right to Verify Change Order Pricing Information: Contractor agrees that Valleywise Health, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor's records (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if Valleywise Health determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contract Price adjustments will apply to all levels

of contractors and/or Subcontractors and to all types of Change Order proposals, specifically including Fixed Price, Unit Price, and Cost-Plus Change Orders.

9.2.4 Requirements for Detailed Change Order Pricing Information: Contractor agrees to provide a detailed breakdown of allowable labor and labor burden cost (i.e., base wage rate of applicable classifications of workers, payroll taxes, and insurance and benefits costs). This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. Information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor rate cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

9.3 **EMERGENCIES**

In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Contract price and/or Contract Time resulting from emergency work shall be determined as provided in this Section.

9.4 **DIFFERING SITE CONDITIONS**

If Differing Site Conditions are encountered at the Project Site, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) days after first observance of the conditions. Valleywise Health will promptly investigate such conditions and, if Valleywise Health determines that Differing Site Conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor may be entitled to an adjustment in the Contract Price or Construction Schedule (and other time requirements), or both, in compliance with the terms of the Contract Documents. If it is determined by Valleywise Health that the conditions at the Project Site are not Differing Site Conditions and no change is justified, then Valleywise Health shall so notify Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) days after Valleywise Health has given notice of its decision. If Valleywise Health and Contractor cannot agree on an adjustment in the Contract price or Construction Schedule (and other time requirements), the adjustment shall be submitted to dispute resolution as provided these General Conditions.

9.5 **CHANGES IN LAWS, REGULATIONS, OR LEGAL REQUIREMENTS OR TAXES**

In the event of a material change in applicable Laws, Regulations, or Legal Requirements, or taxes subsequent to the date of the Contract by the parties, Contractor may be entitled to a Change Order to the extent that such change causes an increase in the cost of, or time required for, performance of any part of the Work Contractor shall provide notice of the changes in laws, regulations, legal requirements or taxes no later than fourteen (14) days after Contractor first becomes aware of the changes.

SECTION 10 — SUSPENSION AND TERMINATION

10.1 **SUSPENSION**

Valleywise Health may suspend the Contract and/or Contractor's performance in accordance with MAG Specification § 105.1 and 108.7.

10.2 **TERMINATION BY THE CONTRACTOR**

If Valleywise Health fails to make payment of any undisputed amounts within thirty (30) days after such payment is due, then following ten (10) days' prior written notice to Valleywise Health

during which time the outstanding and undisputed amount remains unpaid, Contractor may terminate the Contract and recover from Valleywise Health payment for Work actually executed and for actual, proven loss with respect to materials, equipment, tools, construction equipment and machinery, including any associated Contractor's Fee, General Conditions Costs and actual damages incurred by Contractor solely as a result of such termination and not capable of mitigation. Under no circumstances shall Valleywise Health have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

10.3 TERMINATION BY THE Valleywise Health FOR CAUSE

10.3.1 MAG Specifications § 108.11 applies to the Contract.

10.3.2 Valleywise Health may also terminate the Contract if Valleywise Health determines, in its sole discretion that Contractor has:

- a. Refused or failed to supply enough properly skilled workers or proper materials.
- b. Failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors.
- c. Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- d. Otherwise materially breached a provision of the Contract Documents or any other contract between Valleywise Health and Contractor.

10.3.3 When any of the above reasons exist, Valleywise Health may terminate the Contract, without prejudice to any other rights or remedies of Valleywise Health, after giving Contractor and Contractors' surety, if any, seven (7) days' prior written notice of Valleywise Health intent to terminate the Contract and Contractor's failure to cure any such reasons. Upon such termination, Valleywise Health may: (1) take possession of the Site and of all materials thereon owned by Contractor; and/or (2) finish the Work by whatever reasonable method Valleywise Health may deem expedient. When Valleywise Health terminates the Contract for one of the reasons stated above, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price existing at the time of such termination exceeds the costs and expenses of finishing the Work and any other damages incurred by Valleywise Health, such excess shall be paid to Contractor. If such costs, expenses, and damages exceed such unpaid balance, Contractor shall pay the difference to Valleywise Health. This obligation for payment shall survive termination of the Contract.

10.4 TERMINATION BY Valleywise Health FOR CONVENIENCE

Valleywise Health may also terminate the Contract at any time for its convenience upon seven (7) days written notice to Contractor specifying the termination date. In the event of termination, which is not the fault, in whole or in part, of Contractor, Valleywise Health shall pay to Contractor only such compensation under the Contract Documents, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from Valleywise Health to Contractor.

10.5 A.R.S. § 38-511

The Contract is subject to and may be terminated by Valleywise Health in accordance with, the provisions of A.R.S. § 38-511.

10.6 NON-APPROPRIATION

Valleywise Health is a government agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If Valleywise Health determines that it does not have funds to meet its obligations under the Contract, Valleywise Health shall have the right to terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available for the Project. In the event of such termination, Valleywise Health agrees to provide written notice of its intent to terminate thirty (30) days prior to the slated termination

date.

- 10.7** Upon any termination of the Contract, no further payments shall be due from Valleywise Health to Contractor unless and until Contractor has delivered to Valleywise Health any and all documentation required to be maintained by Contractor or provided by Contractor to Valleywise Health and all Confidential Information related to the Project. Under no circumstances shall Valleywise Health have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

SECTION 11— INSURANCE AND BONDS

11.1 INSURANCE REQUIREMENTS

- 11.1.1 Contractor shall obtain, maintain, and provide verification of insurance coverage set forth in Exhibit B to the Contract.
- 11.1.2 Valleywise Health may choose to utilize a Contractor Controlled Insurance Program (CCIP) or an Owner Controlled Insurance Program (OCIP) for the Project. If an OCIP is utilized for the Project, the insurance requirements set forth in this Section 11.1 and Exhibit B of the Contract shall be amended to incorporate the provisions of the OCIP, and Contractor agrees to comply with the terms of the OCIP.
- 11.1.3 Valleywise Health may in the Contract Documents designate additional insured(s) along with Valleywise Health (and their respective employees, members, representatives, agents and affiliates) on all required insurance policies, and all coverage applicable to Valleywise Health under this Section 11.1 and Exhibit B shall apply to such designated additional insured(s) as well.
- 11.1.4 Verification of Coverage
- 11.1.4.1 Contractor shall furnish Valleywise Health with the most recent ACORD® Certificate of Liability Insurance form with additional insured endorsements as required under Exhibit B of the Contract.
- 11.1.4.2 All certificates and endorsements are to be received and approved by Valleywise Health before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the durations required in this Section. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Contract.
- 11.1.4.3 All certificates required by this Agreement shall be sent directly to Project Manager. Valleywise Health Project/Contract Number and Project description shall be noted on the ACORD® Certificate of Liability Insurance form. Valleywise Health reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
- 11.1.5 Subcontractors. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to Valleywise Health separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including Exhibit B of the Contract.

11.2 BONDS AND OTHER PERFORMANCE SECURITY

- 11.2.1 Prior to execution of the Contract, Contractor shall provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price.
- 11.2.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement.

The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required.

- 11.2.3 The bonds shall be made payable and be acceptable to Valleywise Health. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 34-221, *et seq.*, and or as otherwise specified in writing by Valleywise Health.
- 11.2.4 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- 11.2.5 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)' published by the A.M. Best Company.
- 11.2.6 Personal or individual bonds are not acceptable.

SECTION 12 — INDEMNIFICATION

- 12.1 To the fullest extent permitted by law, Design Professional or Contractor, its successors, assigns, and guarantors, shall indemnify and hold harmless the Valleywise Health, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Design Professional, Contractor, or other persons employed or used by Design Professional or Contractor in the performance of the Contract
- 12.2 If court of law determines that this section is void under A.R.S. § 34-226 because a word, words, or phrase in this section makes this section void under A.R.S. § 34-226, then such word, words, or phrase (as applicable) shall be deemed to be stricken to the extent necessary so that this section is not void under A.R.S. § 34-226 and the remaining obligations shall remain in full force and effect; and the language of this section shall be retroactively reformed to the extent reasonably possible in such a manner so that the reformed language provides essentially the same rights and benefits to the fullest extent permitted by A.R.S. § 34226(B).

SECTION 13 — DISPUTE RESOLUTION

- 13.1 All disputes arising out of or relating to the Contract, the Work or the Project shall be resolved pursuant to the Dispute Resolution process set forth in this Section 13, and not pursuant to MAG Specifications § 110.

13.2 INFORMAL DISPUTE RESOLUTION

The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager, the Design Professional Representative and/or the Contractor Representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative (DRR) process set forth below, which is intended to be an expedited process.

13.3 DISPUTE RESOLUTION REPRESENTATIVE (DRR) PROCESS

- 13.3.1 The Parties under the Contract agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project (Claim or Claims) shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the DRR Process).
- 13.3.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

- 13.3.2.1 For claims by the Contractor or the Design Professional, the DRR Process shall be initiated by the party asserting the claim serving written notice on Valleywise Health setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.
- 13.3.2.2 For claims by Valleywise Health, the DRR process will be initiated by Valleywise Health providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.
- 13.3.2.3 The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.
- 13.3.3 The other parties shall respond in writing to the DRR Notice (DRR Response) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties' Dispute Resolution Representatives.
- 13.3.4 The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and Response.
- 13.3.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.
- 13.3.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.
- 13.3.7 Unless otherwise designated in a written notice to the other parties, the Project Manager, and the representatives of the Contractor and of the Design Professional shall act as the parties' designated Dispute Resolution Representatives.
- 13.3.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties' designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.

13.4 MEDIATION

- 13.4.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under B (4) above, or after the DRR is terminated pursuant to §13.3.5 above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.
- 13.4.2 The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Maricopa County Superior Court to appoint a mediator. The mediation shall occur within forth (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.
- 13.4.3 The qualifications for the mediator shall be that they be: (a) an experienced mediator,

arbitrator, or litigator of construction disputes; and (b) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.

13.4.4 Each party shall provide to the other party and the mediator all the information and documentation required under 13.3.2.1 and 13.3.2.2 above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.

13.4.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Phoenix, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.

13.5 LITIGATION

13.5.1 If the mediation is unsuccessful, either party may file suit in the Maricopa County Superior Court, and the parties agree that jurisdiction and venue are proper therein.

13.5.2 The prevailing party in any court proceeding under this Agreement shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred.

13.5.3 13.5.4 The Parties agree to participate as a party, by joinder and/or consolidation, in any arbitration, litigation, or other dispute resolution involving as an issue, claim, or defense, any action, inaction, or service provided under this Contract or in relation to the Project or the Work, or any defect or deficiency in the Work.

13.5.5 Any award or judgment shall not include any punitive damages.

13.6 CONTINUATION OF WORK DURING DISPUTE RESOLUTION

Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations under the Contract until such dispute is resolved.

13.7 RIGHT TO FILE SUIT FOR INJUNCTIVE RELIEF

Notwithstanding any other provision in the Contract, Valleywise Health has the right to immediately file in court and pursue an action for a temporary restraining order and/or injunctive relief against Contractor if Valleywise Health determines that such action is necessary to protect its interests under the Contract, to obtain specific performance of any provision of the Contract, to advance the completion of the Project, or to protect health, welfare and/or safety, including without limitation, an action of an order directing Contractor to continue or return to construction the Work under the Contract.

SECTION 14 — MISCELLANEOUS PROVISIONS

14.1 CONTRACT DOCUMENTS

14.1.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

14.1.2 In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence as follows from highest to lowest: Change Orders, Addenda, Contract/Job/Project Order, Project Specific Provisions, General

Conditions, Specifications, Drawings, Valleywise Health Amendments to MAG Standard Specifications and Valleywise Health Standard Details, and MAG Uniform Standard Specifications and Details for Public Works Construction. In the event of a conflict between a proposal or SOQ incorporated into as a contract document and other Contract Documents, the higher quality or stricter requirement shall apply to the Contractor.

- 14.1.3 On the drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings.
- 14.1.4 The headings used in this Agreement or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 14.1.5 The Contract Documents form the entire agreement between Valleywise Health and Contractor. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.
- 14.1.6 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party in the form of a Change Order.

14.2 COOPERATION AND FURTHER DOCUMENTATION

Contractor agrees to provide Valleywise Health such other duly executed documents as shall be reasonably requested by Valleywise Health to implement the intent of the Contract Documents.

14.3 ASSIGNMENT

Neither Contractor nor Valleywise Health shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents, any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Contract.

14.4 SUCCESSORS

Contractor and Valleywise Health intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors, and assigns.

14.5 NO THIRD-PARTY BENEFICIARY

Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than Valleywise Health and Contractor, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of Valleywise Health and Contractor and not for the benefit of any other party, unless otherwise expressly set forth in the Contract Documents.

14.6 GOVERNING LAW AND VENUE

The Agreement and all Contract Documents shall be deemed to be made under and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any court action to enforce any provision of the Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

14.7 SEVERABILITY

If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the affected provision, the remainder of the Contract Documents, and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

14.8 LEGAL REQUIREMENTS

At all times relevant to its entry into the Contract and performance of the Services and/or the Work, Contractor shall fully comply with all Laws, Regulations, or Legal Requirements applicable to Valleywise Health, the Project, and the Contract, including, without limitation, those set forth on Exhibit C of the Contract.

14.9 CONFLICT OF INTEREST

14.9.1 Contractor agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, existing prior to the execution of the Contract. Further, Contractor agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, if Contractor gains such interest during the Contract. If Contractor gains financial or economic interest in the Project during the course of the Contract, this may be grounds for terminating the Contract.

14.9.2 Contractor shall not engage the services on the Contract of any present or former Valleywise Health employee who was involved as a decision maker in the selection or approval processes, or who negotiated and/or approved billings or Contract Modifications for the Contract.

14.9.3 Contractor agrees that it shall not perform services on this Project for a Contractor, Subcontractor, or any Supplier, not covered under the Contract.

14.10 INDEPENDENT CONTRACTOR

Contractor is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give Valleywise Health the right to direct Contractor as to the details of accomplishing the Work or to exercise a measure of control over the Work means that Contractor shall follow the wishes of Valleywise Health as the results of the Work only. These results shall comply with all applicable laws and ordinances.

14.11 CONFIDENTIALITY

14.11.1 Contractor, for the benefit of Valleywise Health, hereby agrees it will not release or cause or permit to be released to the public any press notices, publicity (oral or written) or advertising promotion relating to, any statement regarding, or any other public announcement or disclosure or cause or permit to be publicly announced or disclosed, in any manner whatsoever, the specific terms and conditions of this Agreement or any comment relating to the Project or the site. Notwithstanding the foregoing, Contractor shall be entitled to disclose the terms of the Agreement to the extent required by law or in the course of enforcing or defending a claim or action hereunder. Contractor shall give Valleywise Health reasonably prompt notice of any disclosure or statement made pursuant to this provision.

14.11.2 Before commencing any Work or Services, Contractor, Design Professional, all subcontractors, suppliers, consultant and/or other provider and their employees working at Valleywise Health sites or projects will be required to agree to and execute the Valleywise Health Acknowledgement of Confidentiality and/or such other documents ensuring the confidentiality of information and records as Valleywise Health shall require.

14.12 SURVIVAL

All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Agreement.

14.13 COVENANTS AGAINST CONTINGENT FEES

Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of Valleywise Health Board, or any employee of Valleywise Health has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, Valleywise Health shall have the right to annul the Contract without liability or at its

discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

14.14 NO WAIVER

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

14.15 NONEXCLUSIVE REMEDIES

The remedies set forth in the Contract are cumulative and not exclusive, and failure to exercise any remedy (including, without limitation, any right to terminate) shall not preclude any party from exercising any other right in seeking any other remedy available to it at law or in equity.

14.16 PROJECT COMMUNICATIONS

14.16.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract. Valleywise Health may change the designated Project Manager and, subject to Section 4.4.14 of these General Conditions, Contractor may change Contractor Representative, by written notice to the other.

14.16.2 Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor Representative, but e-mail communications, unless accompanied by an attachment that complies with the requirements set forth in the Contract Documents for change orders, are not binding upon Valleywise Health and cannot change the terms of the Contract or the scope of work or effectuate any change that requires a written change order. The use of e-mails is for information only, and e-mails will have no legal or binding effect.

14.16.3 Unless otherwise provided herein, formal demands and or notices under the Contract shall be in writing and shall be deemed to have been duly given and received either (a) on the date of service if personally served

on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follow:

To Valleywise Health:	Project Manager
With a Copy to:	Contracts Management, or as designated by Valleywise Health in writing
To Contractor:	Contractor's Representative for the Contract

14.16.4 Contractors shall subscribe to a program and project management construction software system of Valleywise Health' determination. The system will be used for the exchange of recordable documentation including, but not limited to, Submissions, RFIs, Meeting Minutes, Contracts, and Change Management.

14.17 CONTRACTOR EVALUATION

Contractors are hereby advised that Valleywise Health has a Contractor Evaluation Program. To determine which Contractors are meeting their construction obligations, the evaluation may include the following items. Quality of Construction; Quality of Project Supervision; Adherence to Contract Time, and Construction Schedule; Cooperation and Coordination with Valleywise Health Forces and Other Contractors Working in Project Areas; Use and Coordination of qualified Subcontractors and Suppliers.

Valleywise Health will not provide or complete any Contractor evaluation form.

14.18 DRUG AND SMOKE FREE WORKPLACE PROGRAM

- 14.18.1 Valleywise Health has adopted policies establishing a drug and smoke free workplace for itself and as a requirement for persons and entities doing business with Valleywise Health, to ensure the safety and health of employees working on Valleywise Health Projects. Valleywise Health' policies are set forth in Appendix 1 to these General Conditions and will be strictly enforced.
- 14.18.2 Contractor shall require and maintain a drug free workplace and at the Site for all employees working under the Contract. Specifically, all employees of a person or entity who are working under a Contract with Valleywise Health and/or on the Site shall be notified, in writing, by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace or on the Site.
- 14.18.3 Failure to require and maintain a drug free workplace in accordance with the Valleywise Health' policy may result in termination of the Contract for cause and possible debarment from submitting responses on solicitations for future Valleywise Health projects.

14.19 WORKPLACE HARASSMENT, DISCRIMINATION AND VIOLENCE PREVENTION

- 14.19.1 Valleywise Health has adopted policies establishing workplace harassment (to include sexual harassment), discrimination and violence prevention for itself and as a requirement for all persons and entities doing business with Valleywise Health, to maintain a work environment that encourages mutual respect, promotes civil and congenial relationships and is free of all forms of harassment, discrimination and violence. Valleywise Health' policy is set forth in Appendix 1 to these General Conditions and will be strictly enforced.
- 14.19.2 Contractor shall require and maintain a workplace under the Contract and at the Site free of any unlawful discrimination, violence, threats, intimidation, bullying, harassment (to include sexual harassment), emotional abuse, and possession of prohibited weapons and or coercion in any form, at the Site or in any way connected with the Work, the Contract or the Site.
- 14.19.3 Failure to require and maintain a drug free workplace in accordance with the Valleywise Health' policy may result in termination of the Contract for cause and possible debarment from submitting responses on solicitations for future Valleywise Health projects.

14.20 NO ISRAEL BOYCOTT

The Parties agree that they are not currently engaged in and agree that for the duration of the Contract they will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35- 393.

SECTION 15 — PROVISIONS APPLICABLE SOLELY TO GMP AND COST-BASED, CONTRACTS, CHANGE ORDERS, AND JOB ORDERS

Note: The provisions in this Section 15 only apply to Contracts or Change Orders involving Guaranteed Maximum Price (GMP) or Cost-Based Pricing.

15.1 ADDITIONAL DEFINITIONS

The definitions set forth in Sections 2 apply to GMP and Cost-Based Contracts, Change Orders, and Job Orders, together with the additional definitions set forth below.

Allowance — A specific amount for a specific item of Work, if any, that Valleywise Health agrees has not been sufficiently designed, detailed, or selected (including design changes from 90% to 100% as authorized by and at the discretion of the Valleywise Health) at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Section 15.3 of these General Conditions.

Baseline Cost Model — A breakdown and estimate of the scope of the Project developed by Contractor
Version date: May 27, 2020

pursuant to Section 17.5.1 of these General Conditions.

Contingency - An agreed to amount in the GMP that may be used by the Contractor for eligible Costs of the Work subject to Section 15.5 of these General Conditions.

Contract Documents — Where compensation under the Contract is based upon a GMP accepted by Valleywise Health, the term "Contract Documents" also includes the accepted GMP Proposal.

Contract Price — Where compensation under the Contract based upon a GMP accepted by Valleywise Health, the term "Contract Price" refers to the GMP.

Cost-Based Contract, Change Order, or Job Order — A Contract, Change Order, or Job Order where the Contract Price is based upon the actual cost of performing the Work, subject to the terms of the Contract Documents, including this Section 15. These would include those generally referred to as "Cost of the Work plus a Fee with a GMP," "Time and Materials," or "Cost Plus a Fee."

Cost of the Work — The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance on the Work. The Cost of the Work shall include only those costs set forth in Section 15.2 of these General Conditions.

Deliverables — The work products prepared by Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by Contractor during pre-construction may include but are limited to: the Baseline Cost Model and Schedule that validate Valleywise Health' plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in the Contract or required by the Project Team.

Detailed Project Schedule — The Detailed Project Schedule developed by the Contractor for the review and approval of the Project Manager in accordance with Section 17.3 of these General Conditions, if applicable.

Fair Market Value - For used material and equipment as referred to in the Contract Documents shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment

General Conditions Costs — Those costs set forth in Section 15.3.4 to these General Conditions.

GMP Plans and Specifications — The plan and specifications upon which the Guaranteed Maximum price Proposal is based.

GMP Proposal — The proposal of Contractor submitted pursuant to Section 17.7 of these General Conditions for the entire Work and/or portion (phases) of the Work.

Guaranteed Maximum Price or GMP — The Guaranteed Maximum Price set forth in the Contract, Change Order, or Job Order if applicable.

Pre-Construction Services Contract — The Contract entered into between Valleywise Health and the Contractor for Pre-Construction Services to be provided by the Contractor, including, without limitation, the generation of a GMP Proposal. If the GMP Proposal is accepted by Valleywise Health and a Construction Contract is entered into between Valleywise Health and Contractor, the duties, obligations, and warranties of the Contractor under the Pre- Construction Services Contract survive and are incorporated into the resulting Construction Contract.

Pre-Construction Services — The services to be provided under the Pre-Construction Services Contract, including Section 17 of these General Conditions.

15.2 CONTRACT PRICE

- 15.2.1 The Contract Price for all Contracts, Change Orders, and Job Orders based upon payment of the Cost of the Work plus a Fee with a GMT, time and materials, or cost-plus a fee shall be the Cost of the Work incurred plus the Fee agreed to in writing by Valleywise Health, limited to the amount of the GMP, if agreed to. Unless otherwise expressly provided in the Contract, Change Order, or Job Order, all Cost Based pricing shall be subject to and limited to GMP.
- 15.2.2 The Contract Price may only be changed as set forth in Section 9 above.
- 15.2.3 Only costs specifically designated as reimbursable costs are eligible for payment by Valleywise Health or may be charged against the Contract Price. All other costs will not be paid by Valleywise Health and shall not be chargeable against the Contract Price.

15.3 COST OF THE WORK

15.3.1 Costs to be Reimbursed

- 15.3.1.1 Generally. The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of Valleywise Health. The Cost of the Work shall include only the items set forth in this Section 15.3.1.

15.3.1.2 Labor Costs.

- 15.3.1.2.1 All labor costs of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with Valleywise Health's prior written approval, at off-site workshops. Costs will be reimbursed in accordance with the labor rates included as an Exhibit of the GMP Proposal ("Labor Rates"). For the workers included in the GMP proposal, the Labor Rates shall be all inclusive, and may not be adjusted without Valleywise Health's prior written approval in a Change Order.

- 15.3.1.2.2 Any and all labor costs for the Contractor's supervisory and administrative personnel when stationed at the site and labor costs for Contractor personnel stationed at the Contractor's home or branch offices for the time they actually spend on the Project, shall be included in the General Conditions Costs at the Labor Rates included in the GMP Proposal, and no additional compensation will be paid therefore without Valleywise Health's prior written approval in a Change Order.

- 15.3.1.2.3 With Valleywise Health's prior written approval, wages and salaries of the Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section 1.2.2 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Employee bonuses and/or costs associated with Employee Stock Ownership Plans ("ESOP") will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

- 15.3.1.2.4 All supervisory and administrative personnel who are assigned full time to the Project will be billed at weekly rates.

- 15.3.1.2.5 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, retirement plans, training costs, and incentives are included in the Labor Rates.

- 15.3.1.1.1.1 Overtime wages paid to salaried personnel (if approved in advance in writing by Valleywise Health) will be reimbursed at the actual rate of overtime pay paid to the individual. No time

charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked.

15.3.1.1.1.2 Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require Valleywise Health' advance written approval (such approval not to be unreasonably withheld) before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. Approvals by email shall suffice. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

15.3.1.3 Subcontract Costs

15.3.1.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

15.3.1.3.2 For scope of work bid packages typically performed by subcontractors, Contractor may "self-perform" such work on a cost-plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon Guaranteed Maximum Price for the "self-performed work". The Contractor may bid their proposed Guaranteed Maximum Price for the work to be "self-performed" against at least three other interested trade contractors. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining "self-performed work" subject to this contract provision, any division of Contractor, or any separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

15.3.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

15.3.1.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

15.3.1.4.2 Costs of materials described in the preceding Subparagraph 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become Valleywise Health' property at the completion of the Work or, at Valleywise Health' option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to Valleywise Health as a deduction from the Cost of the Work.

15.3.1.4.3 Proceeds from the sale of recyclable materials, scrap, waste, etc. shall be credited to job cost.

15.3.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

15.3.1.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are purchased by the Contractor for the Project and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools purchased by the Contractor for the Project that are not fully consumed shall be based on the purchase cost of the item less the value of the item when it is no longer used at the Project site. Costs for items previously used by the Contractor that are being purchased for the Project shall be at fair market value.

15.3.1.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of

transportation, installation, fuel, maintenance, sales/use tax, prorated personal property tax, licenses, fees, registration, damage insurance, minor repairs, dismantling and removal. Rates of Contractor-owned equipment shall be charged at the rates identified in Exhibit G to the Contract. If Exhibit G to the Contract does not exist or does not contain the item being rented, the rental charges shall be at rates not higher than the standard paid at the location of the Project. Rental charges for items provided by others shall be at the invoiced cost. Damage and replacement insurance for rented items will be billed to the Project at a premium rate of eight percent (8%) of the invoiced rental rate whether provided by the Contractor or others.

- 15.3.1.5.2.1 The Projected usage for each piece of equipment to be rented for use on the Project and the estimated total rentals shall be considered by the Contractor in a documented plan (the "Equipment Plan") included in the GMP Proposal before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the Project, the Contractor shall transfer title and possession of all remaining job- owned equipment to Valleywise Health, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Valleywise Health and Contractor.
- 15.3.1.5.2.2 Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Contractor.
- 15.3.1.5.2.3 Equipment Rental Rates.
- 15.3.1.5.2.3.1 Compensation for equipment used on the Project shall be paid in accordance with the Equipment Plan submitted by Contractor in the accepted GMP Proposal and no payments will be made in excess of the rates set forth in the Equipment Plan referenced above..
- 15.3.1.5.2.3.2 All equipment rental rates and costs are subject to Valleywise Health' right to audit when submitted as part of the Equipment Plan and/or at any time during the Project.
- 15.3.1.5.2.4 The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 80% of the replacement cost for such piece of equipment. Such aggregate limitations will apply, and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.
- 15.3.1.5.2.5 Losses resulting from lost, damaged or stolen tools and equipment shall be insured by Contractor as part of the rental changes, and the replacement of lost, damages or stolen tools and equipment shall not be reimbursable by Valleywise Health under the Contract.
- 15.3.1.5.2.6 The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to Valleywise Health each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved Fair market value at the time the piece of equipment was first used on the job and (4) final disposition.
- 15.3.1.5.2.7 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs, and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

- 15.3.1.5.3 Costs of removal of debris From the Site.
- 15.3.1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- 15.3.1.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work. No travel expenses will be reimbursed to Contractor's representatives unless Project related travel required them to travel to a destination more than 100 miles from the Project location. Any travel involving airfare will require advance written approval by an authorized Valleywise Health' representative.
- 15.3.1.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by Valleywise Health.
- 15.3.1.5.7 Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents (\$.05) per square foot for prints and a maximum of five cents (\$.05) per 8 1/2 by 11 inch page for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third-party telephone company for the field office telephone.
- 15.3.1.6 Miscellaneous Costs.
- 15.3.1.6.1 Premiums for that portion of insurance and bond premiums that can be directly attributed to the Contract:
 - 15.3.1.6.1.1 Premiums for the amount to be reimbursed to the contractor for all contractually required liability insurance will be based on actual costs of the insurance. The Contractor must provide documentation from the insurance company that provides all required liability insurance cost for the Valleywise Health project in accordance with this contract. not to exceed a total of .5% of the net reimbursable Cost of Work (not including liability insurance and not including fee). If the Contractor's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this contract provision, the difference shall be considered to be covered by the Contractor's Fee.
 - 15.3.1.6.1.2 If applicable, premiums for builder's risk property insurance will be billed at actual cost, in an amount not to exceed the amount agreed to in the GMP Proposal, unless preapproved in writing by Valleywise Health
 - 15.3.1.6.1.3 If applicable, premiums for payment and performance bonds (if required) will be billed at actual cost in an amount not to exceed the amount agreed to in the GMP Proposal, unless preapproved in writing by Valleywise Health.
 - 15.3.1.6.1.4 Premiums for subcontract default insurance will be billed at actual cost in an amount not to exceed the amount agreed to in the GMP Proposal, unless preapproved in writing by Valleywise Health
- 15.3.1.6. 2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which Contractor is liable in an amount not to exceed the amount agreed to in the GMP Proposal, unless preapproved in writing by Valleywise Health.
- 15.3.1.6.3 Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract Documents to pay.
- 15.3.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of Section 15.3.1.7.3 below. Fine
- 15.3.1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights

arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with Valleywise Health' consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.

15.3.1.6.6 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to Valleywise Health as set forth in the Contract Documents.

15.3.1.6.7 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between Valleywise Health and Contractor, reasonably incurred by the Contractor in the performance of the Work and with Valleywise Health' prior written approval, which approval shall not be unreasonably withheld.

15.3.1.6.8 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if pre-approved by Valleywise Health in writing. If Valleywise Health authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to a maximum of \$50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by Valleywise Health will be considered to be covered by the Contractor's Fee.

15.3.1.7 Other Costs and Emergencies.

15.3.1.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Valleywise Health.

15.3.1.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property.

15.3.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

15.3.1.8 Related Party Transactions.

15.3.1.8.1 The term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

15.3.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify Valleywise Health in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If Valleywise Health, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If Valleywise Health fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party.

15.3.2 Costs Not to be Reimbursed.

15.3.2.1 The Cost of the Work shall not include:

15.3.2.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 15.3.1.2.2 and 15.3.1.2.3.

15.3.2.1.2 Expenses of the Contractor's principal office and offices other than the site office.

15.3.2.1.3 Overhead and general expenses, except as may be expressly included in section 1.

15.3.2.1.3.1 Costs of Contractor's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly, the Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Contractor's home or branch offices, or other outside service locations.

15.3.2.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work. Rental costs of machinery and equipment, except as specifically provided in Subparagraph 15.3.1.5.2.

15.3.2.1.5 Except as provided in Subparagraph 1.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

15.3.2.1.6 Any cost not specifically and expressly described in Section 15.3.1.

15.3.2.1.7 Costs, other than costs included in Change Orders approved by Valleywise Health, that would cause the GMP to be exceeded.

15.3.3 Discounts, Rebates, Refunds and Savings.

15.3.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to Valleywise Health if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from Valleywise Health, or (2) Valleywise Health has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales or surplus materials and equipment shall accrue to Valleywise Health, and the Contractor shall make provisions so that they can be secured.

15.3.3.1.1 Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any contractor controlled insurance programs applicable to the Project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

15.3.3.1.1 "Cash" discounts which may accrue to the Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to Valleywise Health if the Contractor is eligible to take advantage of the discounts.

15.3.3.1.2 Amounts that accrue to Valleywise Health in accordance with the provisions of Section 15.3.3.1 shall be credited to Valleywise Health as a deduction from the Cost of the Work.

15.3.4 General Conditions Costs.

15.3.4.1 General Conditions Costs may include, but are not limited to the following types of costs incurred by the Contractor during construction of the Work to the extent they are reimbursable Costs of the Work as delineated above: payroll costs for Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g.

loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, software and technology costs (at rates included in the GMP Proposal) attributable to the supervisory and administrative personnel described in Section 15.3.1.2.2, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the Contractor or Subcontractors, fees for permits and licenses.

15.3.4.2 General Conditions Costs may be paid on a percentage of the Contract Price or on a lump/stipulate sum basis as set forth in the Contract. All costs included in the General Conditions Costs shall not be separately invoiced to or paid by Valleywise Health.

15.3.4.3 The total amount of General Conditions Costs for the Work may be divided by the number of days allowed for performance of the Work, to determine a fixed daily rate for General Conditions Costs that may be used in computing the General Conditions Costs allocated to any period of time, or for any adjustments in the General Conditions Costs agreed to in writing by Valleywise Health.

15.3.4.4 Any and all savings on the GMP, or any separately guaranteed items comprising the GMP, shall belong to Valleywise Health, subject to any express right in the Contract for the Contractor to share in savings. Savings are subject to Valleywise Health' right to audit and may be audited separately.

15.4 ALLOWANCES

15.4.3 Contractor shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by Valleywise Health. Items covered by these Allowances shall be supplied for such amounts and by such persons as Valleywise Health may direct, provided Contractor will not be required to employ persons against whom Contractor makes a reasonable objection. Materials and equipment under an Allowance shall be selected by Valleywise Health in accordance with a schedule to be mutually agreed upon by Valleywise Health, Design Professional and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.

15.4.4 Unless otherwise provided in the Contract Documents:

15.4.4.1 These Allowances shall cover the cost to Contractor, less any applicable trade discount, of the Materials and equipment required by the Allowances, delivered at the Site, and all applicable taxes.

15.4.4.2 Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to Materials and Equipment required by the Allowance shall be included in the Contract Sum and not in the Allowance; and

15.4.4.3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

15.5 CONTINGENCY

An agreed to amount in the GMP that may only be used in accordance with the terms set forth in these General Conditions and with prior written approval by the Valleywise Health, such approval not to be unreasonably withheld. Any and all unused contingencies will be given to Valleywise Health.

15.5.1 The Contingency shall be included as separate line items on the Schedule of Values and outlined in the Final GMP. Change Order Requests and approved Change Orders shall indicate if any portion of the change(s) encompassed therein are to be paid from, allocated to, or

credited back (if a deductive change order) to the Contingency. The Owner and Contractor may adjust the Contingency during the course of the construction of the Project only by written Change Order executed by both Parties.

- 15.5.2 The Contingency may be utilized by Contractor to cover any costs resulting from errors or conditions or events not foreseen at the time of approval of the GMP Proposal, including problems with subcontractors and/or suppliers. Any Costs which the Contractor seeks to have allocated to or paid from the Contingency must satisfy the requirements of Costs of the Work for costs to be reimbursed, and Contractor shall provide in relation to the affected applications for payment such documentation in relation to costs to be reimbursed from the Contractor's Contingency as are required for other costs to be reimbursed under the Contract Documents.

REDUCTION IN RETENTION

If the Contract Price is based upon a GMP, in order to receive payment of one-half of the retention as set forth in Section 8.2.2.3 above, Contractor must also submit to the Project Manager a complete accounting of the Actual Reimbursable Cost of the Work to date, including all such documentation (including, without limitation, invoices, subcontract, subcontractor change orders, purchase orders, records of payment, etc.) as Valleywise Health may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by Valleywise Health, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Valleywise Health. The Project Manager's determinations as to Actual Reimbursable Cost of the Work shall be the basis of payment until final Project Closeout and Final Payment under the Contract.

15.6 FINAL PAYMENT

If the Contract Price is based upon a GMP, as a further condition precedent to Final Payment by Valleywise Health, Contractor must submit to the Project Manager a complete final accounting of the Actual Reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as Valleywise Health may require, to establish whether the payments made to Contractor equal, exceed, or are less than the Actual Reimbursable Cost of the Work to date. Any excess payments by Valleywise Health, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to Valleywise Health. Disputes relating to the Final Cost of the Work shall be subject to Valleywise Health' audit rights under Sections 8.9 above and 15.7 below, and the dispute resolution process under Section 13 above.

15.7 OPEN BOOK

On any GMP-based or Cost-Based Contract, Job Order, or Change Order, Valleywise Health may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

15.8 DIFFERING SITE CONDITIONS, CHANGE IN LAWS AND OTHER EVENTS BEYOND CONTRACTOR'S CONTROL

A Change Order for increased costs under Section 9.4, 9.5 or other events beyond Contractor's control. above will only be considered or granted by Valleywise Health to the extent such actual, documented costs are justified and there was no way to anticipate the reason for the change order when the project was initially bid.

SECTION 16 — PROVISIONS APPLICABLE SOLELY TO JOB ORDER CONTRACTS (JOC)

Note: The provisions in this Section 16 only apply to Job Order Contracts. To the extent the Contract Price for a Job Order is a GMP or Cost-Based, the provisions of Section 15 above will also apply. To the extent a

Job Order may include design services, the provision of Section 17 and/or 18 below may also apply.

16.1 ADDITIONAL DEFINITIONS

The definitions set forth in Sections 1 and below shall apply to a Job Order Contracts and Job Orders. In addition, the definitions set forth in Section 15.1 above shall apply to all Cost-Based Job Orders.

Bid Schedule — The Bid Schedule shows the Contractor's Coefficients and Project Schedule of Values (subcontracted costs). The Bid Schedule is incorporated into the Contract as a result of final negotiations with Contractor during the second step of the selection process and incorporated into the Contract as Exhibit B thereto.

Contract — Includes specific Job Order Contract and Job Orders issued and agreed to by Valleywise Health and Contractor.

Contractor's Coefficient - A numerical factor that represents Contractor total costs (indirect and direct costs, sales tax, profit, etc.) and other adjustments for market conditions.

Contractor's Job Order Proposal — The Proposal submitted by Contractors in response to an RFP issued by Valleywise Health to develop a Job Order.

Guaranteed Maximum Price or GMP (Open Book) Job Order — Job Order under which payment to Contractor is based upon Open Book costs as provided under this Section 16.

Job Order - The document for a Project executed by Valleywise Health under a Job Order Contract, as it may be modified by all Change Orders, if any, relating to the Project.

Job Order Proposal — The proposal submitted by Contractor for each Project.

Job Order Request for Proposal (RFP) - The Request for Proposals issued by Valleywise Health for each Job Order Project.

16.2 ORDERING AND PROCESSING PROCEDURES FOR JOB ORDERS

16.2.1 The process for developing and issuing a Job Order for a particular Project consists of three (3) procedures: (1) issuance of an RFP by Valleywise Health; (2) Contractor's response to the RFP in the form of Contractor's Job Order Proposal; and (3) Issuance of a Job Order by Valleywise Health, as set forth below.

16.2.2 RFPs For Job Orders

16.2.2.1 Valleywise Health will provide to Contractor an RFP with a Scope of Work (SOW) describing the Work to be performed, which may include special instructions and conditions, material submittal requirements, and, if applicable, a complete set of sketches, construction drawings and specifications for the Job Order.

16.2.2.2 Some Job Order RFPs will be issued by Valleywise Health without detailed sketches, drawing and specifications and will rely on Contractor to produce them for Valleywise Health review and approval and is considered to be preconstruction and incidental design services included in Contractor's Coefficients and overhead for GMP (Open Book) Job Orders. In addition, Contractor will not be reimbursed for any pre-Job Order costs, including proposal preparation, attendance during negotiations, or site visits.

16.2.2.3 Valleywise Health will identify the type of Price Proposal Contractor should submit in response to the RFP for each Job Order Project. Valleywise Health and Contractor may agree to structure any Job Order on either a Fixed Price or GMP (Open Book) basis, depending upon the magnitude, complexity, and duration of the underlying Project. If the parties are unable to agree on the structure of a Job Order, then the Job Order shall be structured as determined by Valleywise Health.

16.2.3 Contractor's Job Order Proposal

16.2.3.1 Contractor shall respond within ten (10) calendar days of the RFP date or site visit, whichever is later or as otherwise indicated on a case-by-case basis, by submitting Contractor's Job Order Proposal to the designated Valleywise Health representative.

16.2.3.2 Unless otherwise required under the terms of the RFP, Contractor's Job Order Proposal shall include the following:

16.2.3.2.1 Contractor's Price Proposal (either Fixed Price or GMP (Open Book) as set forth below).

16.2.3.2.2 A Project Schedule showing all milestones (e.g., ordering materials, demolition, work phasing, and completion date); and

16.2.3.2.3 Necessary documentation to indicate that adequate scoping, layout, setup, and planning to accomplish the work have been completed. Examples of documentation that might reasonably be expected include sketches, drawings, calculations, catalog cuts and specifications produced to a level of detail and skill that could be expected of experienced, competent project managers with five or more periods experience in their respective trade.

16.2.3.3 For specific GMP (Open Book) Job Orders, Valleywise Health may also require Contractor to comply with any or all of the requirements of Section 17.7 below.

16.2.3.4 Contractor's Price Proposal for Fixed Price Job Orders

16.2.3.4.1 Contractor's Price Proposal shall comply with Section 16.3.2 below.

16.2.3.5 Contractor's Price Proposal for GMP (Open Book) Job Orders

16.2.3.5.1 Contractor shall provide the Price Proposal for GMP (Open Book) Job Orders in the format as directed by Valleywise Health. Unless otherwise instructed by Valleywise Health in writing, all Price Proposals on GMP (Open Book) RFPs shall comply with Section 15 above of these General Conditions. Contractor's Price Proposals for GMP (Open Book) Job Orders must, unless otherwise expressly set forth in the RFP, include a GMP for total performance of the Work.

16.2.3.5.2 Contractor's Price Proposal shall include all costs broken down by division/specialty; a quote summary with at least three (3) quotes (if available), identification of the subcontractor for each quote, and the selected quote. These direct costs shall be totaled. The total Job Order cost shall be this total cost with reasonable General Conditions Costs, Profit, Tax and Bond, as set forth herein.

16.2.3.5.3 Direct job cost shall be based upon firm price quotes from Subcontractors on Contractor's approved Subcontractor list. To the extent practicable, Contractor shall obtain firm price quotes from three (3) Subcontractors for each discipline applicable to the project. If three (3) quotes cannot reasonably be obtained for a discipline, contract shall make known the reasons contractor was unable to obtain additional price quotes.

16.2.3.5.4 Contractor shall select Subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select Subcontractors based on price alone. A qualifications and price selection may be a one-step selection based on a combination of qualifications and price or a two-step selection. In a two-step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.

16.2.3.5.5 Upon request, Contractor shall provide Valleywise Health with copies of Subcontractor quotes and the basis for selection of each subcontractor.

16.2.3.6 If Valleywise Health objects to a selected Subcontractor, Valleywise Health shall make the

objection and the reasons for the objection known to the contractor. Contractor shall then present an acceptable Subcontractor for the applicable discipline. Valleywise Health shall not unreasonably object to or withhold approval of a Subcontractor.

16.2.3.7 For self-performed work Contractor shall establish Contractor's costs by bidding their costs against at least three (3) other interested trade contractors. No self-performed work will be allowed to be performed on a lump sum basis.

16.2.3.8 The following shall be included in Contractor's Price Proposal for GMP (Open Book) Job Orders:

16.2.3.8.1 General Conditions Costs as set forth in Section 15.3.4 of these General Conditions.

16.2.3.8.2 Profit as a fixed multiplier applied to Direct Project Cost and General Conditions Costs for the Project.

16.2.4 Issuance of Job Order.

16.2.4.1 An Valleywise Health Representative will compare the Contractor's Job Order Proposal with Valleywise Health' estimate, schedules and other requirements, and then, if the Valleywise Health Representative determines it is in the best interest of Valleywise Health, arrange a meeting with Contractor, at which time the Contractor's Job Order Proposal will be discussed and negotiated.

16.2.4.2 If the Valleywise Health Representative determines that it is in the best interest of Valleywise Health, Valleywise Health shall then issue a Job Order in Valleywise Health' current form to Contractor for execution.

16.2.5 Job Order Intent. Each Job Order will be interpreted to include all items reasonably necessary to complete the Project under that Job Order as described in the scope of the Work in that Job Order. All Work shall be performed in a professional manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose, unless otherwise specified. The Notice to Proceed, and the Start Date established therein, shall be deemed an integral part of the Job Order the same as if set forth therein.

16.3 CONTRACTOR PRICING FOR JOB ORDERS

16.3.1 Job Orders shall be priced based on a Fixed Price or Open Book procedures. The required procedure shall be identified by Valleywise Health in each Job Order Request for Proposal ("RFP") for each Job Order, as set forth below.

16.3.2 Pricing for Fixed Price Job Orders

16.3.2.1 Contractor's pricing for each Fixed Price Job Order shall consist of the Contractor's Coefficients as listed in the Contractor's Bid Schedule, Part A and the contractor's subcontracted costs as listed in Bid Schedule Part B as described below. The Contractor's Coefficient is a numerical factor that represents Contractor costs (indirect and direct costs, sales tax, profit, etc.) not considered to be included in the Total Cost Data for Fixed Price Job Orders.

16.3.2.2 Contractor's Coefficient for Fixed Price Job Orders. Contractor's Coefficient shall encompass all allowable Contractor costs not included in Contractor's subcontracted costs. Examples of such costs include in the Contractor's Coefficient include: state taxes and payroll taxes, such as FICA, workmen's compensation, state and federal unemployment taxes for direct payroll employees, superintendent salaries, builders risk insurance, mobilization and demobilization expenses and bond premiums; and various overhead expenses such as project estimating, site office overhead, field office buildings, furniture and equipment, office staff salaries, vehicle

and construction equipment maintenance, office administrative expenses and a proportional share of home office overhead. The Contractor's Coefficient shall also include all insurance, additional supervision, paperwork fees associated with a particular Job Order (i.e., environmental permits, estimates, reports, etc.), consultant fees for incidental design work, on- and off-site storage (except storage containers where required for property security by the Job Order), etc. The Contractor's Coefficient shall encompass all costs other than subcontracted costs and shall include all adjustments to the Total Cost Data to compensate for any difference between these costs and actual market conditions. Contractor's Coefficient shall also include costs described as costs to provide submittals, interface with Valleywise Health representatives, coordination with occupants and other contractors.

16.3.2.3 Additional examples of Project Specific Costs Covered in the Contractor's Coefficient for Fixed Price Job Orders. Contractor's Coefficient shall also include costs for, but not limited to:

1. All Waste and excess material.
2. Mobilization and close out for the basic contract.
3. Lean up on each Job Order.
4. Safety (i.e., Safety Rails, Safety Nets, tethers, hardhats, and safety glasses, etc.).
5. Project management and supervision.
6. Quality Control. Does not include core costs for paving.
7. Office management and equipment.
8. Depreciation of mobile office(s)
9. Subcontractor profit.
10. Record drawings, submittals, permits, licenses, and other risks of doing business.
11. Site Security.
12. Acceptance Testing.
13. Permits Under \$500.00 each. Permits required over this amount to be an Allowance.
14. Small Tools.
15. Vehicular Access & Parking.
16. Cleaning and Waste Management (Rubbish removal covered in Division 2).
17. Construction Progress Documentation.
18. Minor construction surveys; under \$250.00 per job Order.

16.3.4 Pricing for GMP (Open Book) Job Orders. GMP (Open Book) pricing shall consist of direct job cost, project-specific general conditions, general and administrative cost, profit, Bond cost and sales tax will be added to Open Book pricing for total Job Order Cost. The factors used in Open Book pricing shall be consistent with the Fixed Price Contractor Coefficients.

16.4 INCIDENTAL DESIGN SERVICES

16.4.1 Contractor represents, covenants and agrees, and contractually assumes the obligation to furnish, all of the required Incidental Design Services through properly licensed and experienced Design Professionals in complete accordance with all of the duties imposed on a Design Professional under the Contract Documents, Laws, Regulations, or Legal Requirements.

16.4.2 All Design Documents (and all other Project-related documents, models, computer drawings and other electronic expression, photographs and other expressions CADD, and BIM files and images included) that any Design Professional, Contractor and/or Contractor's Design Professional(s) prepare in connection with a Job Order and the copyrights therein (collectively, the "Instruments of Service") shall be the property of Valleywise Health. Contractor covenants and agrees to execute any additional document reasonably requested by Valleywise Health to confirm such assignment without any additional compensation.

16.5 CONSTRUCTION SERVICES

16.5.1 The following subsections of this Section 16.5 set forth requirements beyond those set forth in Section 4 above which apply to Construction Services performed under a Job Order.

16.5.2 Contractor shall perform the Work using only those firms, team members and individuals

designated by Contractor consistent with each Job Order or otherwise approved by Valleywise Health pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.

16.5.3 Construction Phasing.

16.5.3.1 Valleywise Health' use of the facilities is anticipated while the Work is being performed. The Work shall be planned and accomplished so that there will be a minimum of interference and inconvenience to occupants in the building and agencies in the vicinity and to other craftsmen who may have to do work in the affected facilities. Any blockage of building exits, or driveways must be coordinated in advance.

16.5.3.2 If applicable, furniture, portable office equipment and wall appurtenances not rigidly fastened to the walls shall be moved by Contractor, protected from damage, and replaced to the original position upon completion of the work. If the work required by the Job Order will not allow furniture and portable office equipment to be replaced to its original position, new locations will be designated by Valleywise Health. Incidental costs associated with moving one-piece furnishings up to approximately 150 pounds to perform such tasks as painting, carpet, or tile replacement, etc., are considered a general cost of building renovation and shall be included in the Contractor's Coefficient. Costs for large scale or wholesale removal and replacement of large quantities of desks or modular workstations, copiers, multiple full file cabinets, etc. to another location or storage outside the work space, or disassembly and reassembly of modular furniture is not considered part of the Contractor's Coefficient and will be priced separately.

16.5.3.3 The work shall, so far as practicable, be done in definite sections or divisions and confined to limited areas which shall be completed before work in other sections or divisions are begun.

16.5.4 Work Site Conflicts. In the event of a conflict between Contractor and others in an occupied facility or where other contractors are performing work on the same facility under other contracts, Valleywise Health shall decide the dispute and that decision shall be final.

16.5.5 Ownership of Work Product. In addition to the provisions of Section 16.4.2 above, and notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of Valleywise Health. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to Valleywise Health. The rights in this Section are exclusive to Valleywise Health in perpetuity.

16.6 OPTIONAL LIQUIDATED DAMAGES

16.6.1 Specific Job Orders. If indicated in a specific Job Order, Valleywise Health may have the right to assess liquidated damages in relation to that specific Job Order as set forth below.

16.6.2 Substantial Completion Liquidated Damages. Contractor acknowledges and agrees that if Contractor fails to obtain Substantial Completion of the Work within the Contract Time, Valleywise Health will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, Valleywise Health and Contractor agree that if Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Valleywise Health shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the per diem amounts set forth in the Job Order commencing from the Substantial Completion Date required under the Job Order until the actual date of Substantial Completion.

16.6.3 Final Completion Liquidated Damages. For the same reasons set forth in Section 16.6.2 above,

Valleywise Health and Contractor further agree that if Contractor fails to achieve Final Completion of the Work within the Contract Time, Valleywise Health shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the per diem amounts set forth in the Job Order commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Job Order, whichever is later, until the actual date of Final Completion.

- 16.6.4 If no specific liquidated damages amount is specified in a specific Job Order, and the Job Order so specifies, the provisions of MAG Specifications § 108.9 shall determine the amount of liquidated damages applicable to that specific Job Order.
- 16.6.5 Valleywise Health may deduct liquidated damages assessed pursuant to this Section 16.6 from any unpaid amounts then or thereafter due Contractor under the Contract or any other agreement between Contractor and Valleywise Health. Any liquidated damages not so deducted from any unpaid amounts due Contractor shall be payable to Valleywise Health at the demand of Valleywise Health, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor

16.7 PERFORMANCE MEASUREMENT

- 16.7.1 Performance Assessment. After the final completion of Work under each Job Order, Valleywise Health may, at its sole discretion, complete a written evaluation of the performance of Contractor on the Job Order in accordance with Section 14.17 of these General Conditions.
- 16.7.2 Feedback. If Valleywise Health opts to complete an evaluation, they will be shared with Contractor as a means of providing feedback regarding Contractor's cost, schedule, and quality of performance. Contractor may submit additional information, comment, recommendations, or rebuttal for association with the evaluation.
- 16.7.3 Comparative Assessment. Contractor's cost, schedule, and quality performance of Job Orders under this Contract will be compared periodically to the performance of other like-situated contractors. The results of these comparisons may be provided to Contractor. Contractor understands that these assessments will necessarily involve significant subjectivity. Contractor agrees to this process and agrees further that the application of subjectivity in these assessments shall not form the basis for any claim or cause of action of any form or nature whatsoever.
- 16.7.4 Consideration in Assignment of Work. Contractor's record of cost, schedule and quality performance and comparative assessments shall be significant considerations in Valleywise Health' determination whether to award future Job Orders. Contractor agrees that any determination by Valleywise Health not to award future Job Orders based on performance will be at the sole discretion of Valleywise Health.

SECTION 17 — PROVISIONS APPLICABLE SOLELY TO PRE-CONSTRUCTION SERVICES

Note: Unless otherwise specified in the Contract, the provisions in this Section 17 only apply to Contracts involving Pre-Construction services being performed by a CMAR (i.e., Construction Manager at Risk Pre-Construction Services). That is why in the Section 17, the term "CMAR" is utilized instead of the term "Contractor", which is utilized throughout the remainder of these General Conditions. See the definitions of "Contractor" in Section 2 above and "CMAR" in Section 15.1 above.

17.1 ADDITIONAL DEFINITIONS

The definitions set forth in Section 2 and 15.1 above shall apply to all Pre-Construction Services.

17.2 GENERAL

- 17.2.1 CMAR shall perform the Services required by, and in accordance with the Contract Documents and as outlined in Exhibit A of the Contract to the satisfaction of the Project Manager, exercising the degree of care, skill, diligence and judgment a professional construction manager experienced in the performance of such services for construction and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout the United States, would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted engineering principles and construction management and construction contracting practices.
- 17.2.2 Team Approach. As set forth in the definitions of "Team Approach" set forth in Section 2 above, Valleywise Health desires to implement a comprehensive team approach to the design, construction, and documentation of all Valleywise Health Projects. Sections 4.1.3, 18.2.2, 18.2.3, 18.2.4 and 18.2.5 apply to CMAR's participation as a Project Team member throughout CMAR's involvement with the Project, both while providing the Pre- Construction Services and throughout the performance of the Work performed by CMAR.
- 17.2.3 As a participating member of the Project Team, CMAR shall provide to Valleywise Health and Design Professional a written evaluation of Valleywise Health' Project Program and budget, each in terms of the other, with recommendations as to the appropriateness of each. CMAR shall prepare a Baseline Cost Model that validates Valleywise Health' budget. The Baseline Cost Model shall include all assumptions and basis of estimates in enough detail so that the Project Team can compare future detail estimates to the Baseline Cost model for variances. Valleywise Health and Design Professional will provide all the reasonably required data that is available in order to reach agreement between the team members that the Baseline Cost Model is an accurate projection of the costs of the Project.
- 17.2.4 CMAR shall attend Project Team meetings, which may include, but are not limited to, bi-weekly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. CMAR attendance at design or other meetings in which CMAR is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of CMAR Contract for default.
- 17.2.5 CMAR shall provide Pre-Construction Services, described herein, in a timely manner and consistent with the intent of the most current Drawings and Specifications. CMAR shall promptly notify Valleywise Health in writing whenever CMAR determines any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work that deviates more than the allowed contingencies within the Baseline Cost Model or requires an adjustment in the Baseline Cost Model, Detailed Cost Estimate, Detailed Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such as established.
- 17.2.6 CMAR when requested by Valleywise Health, shall attend, make presentations, and participate as may be appropriate in public agency and or community meetings, relevant to the Project. CMAR shall provide drawings, schedule diagrams, budget charges and other materials describing the Project when their use is required or appropriate in any such public agency meetings.
- 17.2.7 Ownership of Work Product. All Work Product prepared or otherwise created in connection with the performance of the Contract, including the Work, are to be and remain the property of Valleywise Health. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or material, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to Valleywise Health. The rights in this Section are exclusive to Valleywise Health in perpetuity.
- 17.2.8 CMAR represents to Valleywise Health in completing Pre-Construction Services and providing the reports and analysis required thereunder, that Work can be properly and timely constructed within the GMP Proposal, if accepted. CMAR does not assume any design responsibilities unless specifically called for in the scope of work, but CMAR shall be responsible for their errors,

omissions or inconsistencies included in the Work.

17.3 DETAILED PROJECT SCHEDULE

- 17.3.1 The fundamental purpose of the Detailed Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Detailed Project Schedule requirements. CMAR shall, however, develop and maintain the Detailed Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Baseline Project Schedule shall be developed as part of the Baseline Cost Model. The Detailed Project Schedule shall use the Critical Path method ("CPM") technique, unless required otherwise, in writing by Valleywise Health. CMAR shall use scheduling software acceptable to Valleywise Health to develop the Detailed Project Schedule. The Detailed Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Detailed Project Schedule shall indicate Milestone dates for the phases once determined. As part of construction phase, Valleywise Health may require CMAR to prepare a "resource loaded" schedule for all work, including work performed by Subcontractors, detailing each of the project tasks and the required/anticipated number of personnel per day for each task. CMAR shall also indicate on the schedule its ability to meet said required/anticipated personnel requirements.
- 17.3.2 CMAR shall include and integrate in the Detailed Project Schedule the services and activities required of Valleywise Health, Design Professional and CMAR including all construction phase activities based on the input received from Valleywise Health and the Design Professional. The Detailed Project Schedule shall define activities as determined by Valleywise Health to the extent required to show: (a) the coordination between preliminary design and various pre-construction documents, (b) any separate long- lead procurements, (c) any permitting issues, (d) any land, right-of-way, or easement acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) startup and commissioning, and (h) occupancy of the completed Work by Valleywise Health. The Detailed Project Schedule shall include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, Milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), Milestone dates for various construction phases, Total Float for all activities to the extent authorized by Valleywise Health, relationships between the activities, Valleywise Health occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Completion.
- 17.3.3 A Baseline Project Schedule shall be initiated with the project Baseline Cost Model and agreed to by the project team at the same time. CMAR shall update and maintain a detailed Project Schedule throughout pre-construction such that it shall not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR shall provide updates and/or revisions to the Detailed Project Schedule for use by the Project Team, whenever required, but no less often than at the Project Team meetings. CMAR shall include with such submittals a narrative describing its analysis of the progress achieved to-date vs. the Baseline Project Schedule, including any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 17.3.4 If phased construction is deemed appropriate at the time of developing the Baseline Cost Model or during the development of the Detailed Project Schedule, and Valleywise Health and Design Professional approve, CMAR shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.
- 17.3.5 Long Lead Time Items. As part of developing the Detailed Project Schedule, CMAR shall identify

all long lead time materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team. Dates for selecting and ordering long lead time items will be included and highlighted in the Detailed Project Schedule

- 17.3.6 Equipment Plan. Contractor shall develop an Equipment Plan that addresses all rental and owned equipment, regardless of whether such equipment will be provided by CMAR or subcontractor(s), that will be necessary to construct the Project and the cost of which will be included as a Cost of the Work in the GMP Proposal. The Equipment Plan will seek to minimize the cost of the equipment to Valleywise Health and maximize the efficient and coordinated use of the equipment for completion of the Project. The Equipment Plan will not only include the costs and allowable lease rates for the equipment but will also include an equipment schedule that will be incorporated into the Detailed Project Schedule and the Schedule of Values submitted with the GMP Proposal.

17.4 DESIGN DOCUMENT REVIEWS

- 17.4.1 CMAR shall evaluate periodically the availability of labor, materials/equipment, cost-sensitive aspects of the design; and other factors that may create an unacceptable variance to the Baseline Cost Model and/or Baseline Project Schedule.
- 17.4.2 CMAR shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CMAR to construct the Project. These additional investigations, if agreed to be necessary by the Project Manager and the Design Professional, shall be acquired by Valleywise Health and copies of the reports will be provided to CMAR.
- 17.4.3 CMAR shall meet with the Project Team as required to review designs during their development. CMAR shall familiarize itself with the evolving documents through pre-construction. CMAR shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and labor and material availability. CMAR shall furthermore advise the Project Team on proposed site improvements, excavation, and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. CMAR shall use established value analysis principles in recommending cost effective alternatives.
- 17.4.4 CMAR shall routinely conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, completeness and coordination of Work of Subcontractors and Suppliers.
- 17.4.4.1 CMAR shall evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design is prepared to facilitate fabrication, transport and installation; (e) sequences of Work required by or inferable from the Drawings and Specifications are practicable; (f) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues; and (g) the design maintains continued operation of the existing Valleywise Health systems and maintains traffic on adjacent roadways. CMAR shall also review the Drawings and Specifications to ensure that what is depicted therein can be constructed as designed and shall promptly inform the Project Team of any issues.
- 17.4.4.2 CMAR shall check cross-reference and complementary Drawings and sections within the Specifications and in general evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are

performing well, or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to Differing Site Conditions.

- 17.4.4.3 The results of the reviews shall be provided to Project Team in formal, written reports clearly identifying all reviewed documents and the discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. CMAR shall meet with Project Team to discuss any findings and review reports.
- 17.4.4.4 CMAR's reviews shall be from a Contractor's perspective, and though it shall serve to eliminate/reduce the number of RFIs and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CMAR.
- 17.4.5 It is CMAR's responsibility to assist the Design Professional in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with applicable Laws, Regulations, or Legal Requirements, (including without limitation the Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities, including without limitation compliance with the 2010 regulations governing implementation of the ADA), building codes, sound engineering principle's rules and regulations. If CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, sound engineering principle's rules and regulations, it shall promptly notify the Project Team in writing, describing the apparent variance of deficiency. However, the Design Professional is ultimately responsible for the compliance of the Drawings and Specifications with those laws, statutes, ordinances, building codes, rules and regulations.
- 17.4.6 The Project Team shall routinely identify and evaluate using value analysis principles and alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a high quality and fully functional Project consistent with the Project Program. If the Project Team agrees, CMAR in cooperation with the Design Professional, will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. Valleywise Health, through the Project Manager, will direct which alternatives will be incorporated into the Project. The Design Professional will have full design responsibility for the review and incorporation of CMAR suggested alternatives into the Drawings and Specifications. CMAR shall analyze the costs and schedule impacts of the alternatives against the Baseline Cost Model and Schedule and provide a recommendation for the Project Team's consideration and Valleywise Health approval prior to the establishment of the GMP.

17.5 BASELINE COSTS MODEL, DETAILED COST ESTIMATES, AND SCHEDULE OF VALUES

- 17.5.1 At the conclusion of the Master Planning and Programming, if required, CMAR will review all available information regarding the design and scope of the Project using CMAR's experience in performing similar work, knowledge of similar projects and current and projected construction costs and, based upon that review, shall develop a Baseline Cost Model for review by the Project Team and approval by Valleywise Health. Once approved by Valleywise Health, the Baseline Cost Model shall be continually referenced as detailed estimates are created as the design progresses throughout Pre-Construction until the final GMP for the entire Project is established. A final GMP for the entire Project must be established and approved by Valleywise Health prior to the start of construction. It is the responsibility of CMAR to ensure Valleywise Health has sufficient information to evaluate and approve a final GMP prior to the time necessary to start construction so construction can be completed within the Contract Time. The Project Detailed Cost Estimate shall be the best representation from CMAR of what the complete functional Project's construction costs will be as indicated by the most current available documents and will be constantly checked against the Baseline Cost Model. CMAR shall communicate to the Project Team and assumptions made in preparing the Baseline Cost Model. The Baseline Cost Model shall support CMAR's Detailed Cost Estimates and may be broken down initially as dictated by the available information, as required by Valleywise Health.

- 17.5.2 After receipt of the Design Professional's most current documents from certain specified pre-construction Milestones, CMAR shall provide a draft Detailed Cost Estimate including a detailed written report detailing any variances to the Baseline Cost Model and Baseline Project Schedule. The Design Professional and CMAR will reconcile any disagreements on the estimate to arrive at an agreed upon Detailed Cost Estimate for the construction costs based on the scope of the Project through that specified pre-construction Milestone. Pre-Construction Milestones applicable to this paragraph are: Master Planning and Programming, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Drawings, if no consensus is reached, Valleywise Health will make the final determination. If the Project Team requires additional updates of the Detailed Cost Estimate beyond that specified in this paragraph, CMAR shall provide the requested information in a timely manner.
- 17.5.3 If at any point the Detailed Cost Estimate submitted to Valleywise Health exceeds the previously accepted Baseline Cost Model or previously approved Detailed Cost Estimate agreed to as set forth in Section 17.5.2 above, CMAR shall make appropriate recommendations to the Project Team on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, such that it is equal to or less than the established Project Team's Baseline Cost Model.
- 17.5.4 Unless other levels of completion are agreed to in writing in the Construction Documents, at 50% Construction Drawings and included with the associated report, CMAR shall also submit to the Project Team for review and approval a Schedule of Values that complies with the following requirements. The Schedule of Values shall be based on Valleywise Health standard bid schedule and highlight significant variances from any previously submitted Schedule of Values. The Schedule of Values shall be directly related to the breakdowns reflected in the Detailed Project Schedule and CMAR's Detailed Cost Estimate. In addition, the Schedule of Values shall: (a) detail unit prices and quantity take-offs, (b) detail all other contingencies and unit price Work shown and specified in the detailed design documents.
- 17.5.5 CMAR is to track, estimate/price and address the Project Team's overall project cost issues that arise outside of the Baseline Cost Model and the latest approved Detailed Cost Estimate such as: Valleywise Health generated changes, Project Team proposed changes, alternate system analysis, constructability items and value engineering analysis. The system used to implement this process will be referred to as the Design Evolution Log. This is to be addressed between the Baseline Cost Model and the Master Planning and Programming Detailed Cost Estimate, and then (unless other levels of completion are agreed to in writing in the Construction Documents) between the Detailed Cost Estimates for each of the pre-construction Milestones thereafter, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Documents, and the bid packages for all Phases.
- 17.5.6 Upon request by Valleywise Health, CMAR shall submit to Valleywise Health a cash flow projection for the Project based on the current updated/revised Detailed Project Schedule and the anticipated level of payments for CMAR during the design and construction phases. In addition, if requested by Valleywise Health and based on information provided by Valleywise Health, CMAR shall prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist Valleywise Health in the financing process.
- 17.5.7 Construction Water. CMAR shall estimate the quantity of water to be used and include the cost thereof in each Detailed Cost Estimate and GMP Proposal provided by Valleywise Health.

17.6 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 17.6.1 There are two ways to select Subcontractors and major Suppliers prior to submission of a GMP Proposal: (1) qualifications-based selection; or (2) a combination of qualifications and price. Except as noted below, the selection of Subcontractors/Suppliers is the sole responsibility of CMAR. In any case, CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers, and for compliance with the requirements of Title 34 of the Arizona Revised Statutes in the selection of a Subcontractors/Suppliers, to the extent applicable. CMAR shall comply with its Subcontractor Selection Plan submitted with its Statement of Qualifications.

- 17.6.2 Valleywise Health may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when CMAR can demonstrate it is in the best interest of the Project. All Work that is performed, after such a qualifications-based selection, for a price that is negotiated by CMAR will be billed in accordance with the GMP for actual costs and may be subject to audit by Valleywise Health.
- 17.6.2.1 Qualifications based selection of a Subcontractor(s)/Supplier(s) should only occur prior to the submittal of the GMP Proposal.
- 17.6.2.2 If a Subcontractor/Supplier selection plan was submitted and agreed to by Valleywise Health, CMAR shall apply the plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide Valleywise Health with its review and recommendations.
- 17.6.2.3 CMAR must receive written Valleywise Health approval for each selected Subcontractor(s) and Supplier(s), which shall not be unreasonably withheld.
- 17.6.2.4 CMAR shall negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.
- 17.6.3 All Work shall be competitively bid unless a Subcontractor or Supplier was selected pursuant to paragraph 17.6.2 above.
- 17.6.3.1 CMAR shall develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by Valleywise Health and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, CMAR may request approval by Valleywise Health to submit less than three names. Without prior written notice to Valleywise Health, no change in the recommended Subcontractors/Suppliers shall be allowed.
- 17.6.3.2 If Valleywise Health objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor/Supplier that is acceptable to Valleywise Health.
- 17.6.3.3 CMAR shall distribute Drawings and Specifications, and when appropriate, conduct a Pre-Bid Conference with prospective Subcontractors and Suppliers.
- 17.6.3.4 If CMAR desires to self-perform certain portions of the Work, it shall request to be one of the approved Subcontractor bidders for those specific bid packages. CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and Valleywise Health concurs that it is necessary in order to ensure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, CMAR may be authorized to self-perform Work without bidding or rebidding the Work. When CMAR self-performs work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by Valleywise Health.
- 17.6.3.5 CMAR shall receive, open, record and evaluate the bids; provided, however, that if CMAR or one of its affiliates is bidding to self-perform the Work that is the subject of the bid, then the bids shall be received, opened, recorded and evaluated by Project Manager instead of CMAR. Bids for each category of Work shall be opened and recorded at a pre-determined time. The apparent low bidders shall be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals, CMAR, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids shall be done with Project Manager in attendance to observe and witness the process. CMAR shall resolve any Subcontractor/Supplier bid withdrawal, protest, or disqualification in connection with the award at no increase in the Cost of Work.

- 17.6.4 CMAR shall be required to prepare two different reports on the subcontracting process.
 - 17.6.4.1 Within fifteen days after each major Subcontractor/Supplier bid opening process; CMAR shall prepare a report for Valleywise Health review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report shall detail: (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each sub-agreement; (b) the sum of all recommended Subcontractor/Supplier bids received; (c) and trade work and its cost that CMAR intends to self-perform, if any.
 - 17.6.4.2 Upon completion of the Subcontractor/Supplier bidding process, CMAR shall submit a summary report to Valleywise Health of the entire Subcontractor/Supplier selection process. The report shall indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 17.6.5 The approved Subcontractors/Suppliers shall provide a Schedule of Values with their bid proposals, which shall be used to create the overall Project Schedule of Values.
- 17.6.6 If after receipt of sub-bids or after award to Subcontractors and Suppliers, Valleywise Health objects to any nominated Subcontractor/Supplier or to any self-performed Work without any reasonable basis, CMAR shall nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by Valleywise Health, CMAR's proposed GMP for the Work or portion thereof shall be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

17.7 GMP PROPOSAL

- 17.7.1 When a GMP Proposal is submitted for a phase of the Work, the GMP will have a Detailed Cost Estimate of the Costs of the Work (as set forth in Section 15.2) in each phase of the Work that is being proposed plus the current estimate for all other Work. Valleywise Health will not approve the GMP for the phase of work without a total estimate for the complete Project. Valleywise Health may request a GMP Proposal for all or any portion of the Project and at any time during pre-construction. Any GMP Proposals submitted by CMAR shall be based on and consistent with Baseline Cost Model and the current update/revised Detailed Cost Estimate at the time of the request and include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- 17.7.2 A GMP Proposal for the entire Project shall be the sum of the Cost of the Work, CMAR Fee, and General Conditions Cost. CMAR guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders. CMAR shall be responsible for any costs for expenses that would cause the Cost of the Work actually incurred, including the Construction Fee and General Conditions Costs, to exceed the GMP.
- 17.7.3 CMAR shall prepare its GMP Proposal in accordance with Valleywise Health request for GMP Proposal requirements based on the most current completed Drawings and Specifications at that time, which unless otherwise directed by Valleywise Health in writing, shall be at 50% Construction Drawings as determined by Valleywise Health. CMAR shall mark the face of each document of each set upon which its GMP Proposal is based. These documents shall be identified as the GMP Plans and Specifications. CMAR shall send one set of those documents to the Project Manager, keep one set, and return the third set to the Design Professional.
- 17.7.4 An updated/revised Detailed Project Schedule, Equipment Plan, and Schedule of Values shall be included in any GMP Proposal(s), all of which shall reflect the GMP Plans, and Specifications the Detailed Project Schedule shall be shown in relationship to the Project Schedule and identify any variance to the Baseline Project Schedule. Any such Detailed Project Schedule updates/revisions shall continue to comply with the requirements of Section 17.3.1 through 17.3.5.

17.7.5 GMP Proposals(s) Review and Approval

17.7.5.1 CMAR shall meet with the Project Team to review the GMP Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the information presented, CMAR shall make adjustments as necessary to the GMP Proposal.

17.7.5.2 If during the review and negotiation of GMP Proposals design changes are required, Valleywise Health may authorize and cause the Design Professional to revise the GMP Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised GMP Plans, and Specification will be furnished to CMAR. CMAR shall promptly notify the Project Team in writing if any such revised GMP Plans, and Specifications are inconsistent with the agreed upon assumptions and clarifications.

17.7.6 All portions of or items comprising the GMP Proposal are subject to audit by Valleywise Health, as deemed appropriate by Valleywise Health, including, without limitation, any based upon unit prices or Work to be self- performed by CMAR, or its affiliates.

17.8 PAYMENT PROCEDURE FOR PRE-CONSTRUCTION SERVICES

17.8.1 Requests for monthly payments by CMAR for Pre-Construction Services shall be submitted monthly and shall be accompanied by a progress report, detailed invoices, and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month

17.8.2 In no event will Valleywise Health pay more that seventy-five (75%) of the Contract Price until final acceptance of ALL Pre-Construction Services, and award of the final approved Construction Services Contract for the entire Project by Valleywise Health Board. If CMAR does not prepare a GMP Proposal that is acceptable to Valleywise Health, or the GMP Proposal exceeds the Valleywise Health Construction Budget, then CMAR understands and acknowledges that it will forfeit any right to receive the 25% of the Contract Price being retained by Valleywise Health.

17.8.3 CMAR agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of Valleywise Health during the progress of any portion of Pre- Construction Services specified in the Contract. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period and may be mutually agreed between the parties. It is understood and agreed, however, that permitting CMAR to proceed to complete any such Services, in whole or in part after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of Valleywise Health of any of their respective legal rights herein.

17.8.4 No compensation to CMAR shall be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

17.8.5 If any service(s) executed by CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of CMAR, CMAR is to be paid for the services performed prior to the abandonment or suspension.

17.9 SURVIVAL OF THE DESIGN SERVICES CONTRACT, DUTIES, OBLIGATIONS, AND WARRANTIES

If the GMP Proposal is accepted by Valleywise Health and a Construction Contract is entered into between Valleywise Health and CMAR, the duties, obligations, and warranties of CMAR under the Pre-Construction Services Contract survive and are incorporated into the resulting Construction Contract.

SECTION 18 — PROVISIONS APPLICABLE SOLELY TO DESIGN PROFESSIONAL AND CONSULTANT CONTRACTS AND DESIGN SERVICES

Note: The provisions in this Section 18 only apply to Contracts or Change Orders involving Design Professionals and/or Design Services.

18.1 ADDITIONAL DEFINITIONS

The definitions set forth in Sections 2 apply to Contracts or Change Orders involving Design Professionals, Consultants and/or Design Services, together with the additional definitions set forth below.

Deliverables — The items, including without limitation, physical and electronic documents, models, drawings, details, specifications, certifications, certificates, licenses, policies, studies, data, surveys, files, record documents/as-builts, manuals, instructions, software, applications, and/or other things which Design Professional is required to provide to Valleywise Health or are necessary to fully and timely perform the Services and provide the full benefits thereof to Valleywise Health. The Deliverables will comply with all Legal Laws, Regulations, or Legal Requirements (including without limitation the Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements) and the BIM Performance Requirements as set forth in Appendix 2.

Master Contract — The written agreement executed between Valleywise Health and Design Professional, including all of the Contract Documents specified therein.

Project Order — A written instrument issued after execution of the Master Contract signed by Valleywise Health and Design Professional, stating their agreement upon the terms under which Design Professional shall provide Design Services for a specific Project or group of Projects as set forth in the Project Order

18.2 STANDARD OF CARE

18.2.1 The Design Services or Services include any and all services reasonably contemplated, normally included, and necessary to complete the Scope of Services set forth in each Project Order in a good and professional manner with due diligence and in a timely manner. Design Professional shall perform the Services required by, and as outlined in each Project Order to the satisfaction of the Project Manager designated by Valleywise Health in the Project Order ("Project Manager"), exercising the degree of care, skill, diligence and judgment that a design professional experienced in the performance of such Services for design, construction, and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout the United States, would exercise at such time, under similar conditions. Design Professional shall, at all times, perform the Services consistent with sound and generally accepted engineering principles and design practices.

18.2.2 Team Approach. The Design Services include facilitating Valleywise Health intension to follow a Team Approach as defined in Section 2 above. The Team Approach will include, but not be limited to, Design Professional's attendance and full participation in all Project Team meetings and work sessions required under the Contract Documents or by Valleywise Health, including without limitation those required under Section 18.3.1.5 below. See also, for example only and not as a limitation, Sections 4.1.3, 17.2.2.

18.2.3 Coordination. Design Professional shall be responsible for coordinating the Services, the Deliverables, and all designs, drawings, and/or specifications developed in relation thereto, with the Valleywise Health Contracts Department and any other Valleywise Health departments as necessary, other design professionals, and all contractors involved in the Project, as well as any other designs, drawings, and/or

specifications for the Project.

18.2.4 Cooperation. Design Professional shall also cooperate with Valleywise Health in communicating with, obtaining necessary approvals or permits from, and responding to, any applicable government entity, regulatory agency, and/or private utility company, including preparing any required reports, applications and/or submittals, and participation in any hearings or meetings.

18.2.5 Quality/Special Features. Design Professional is responsible, to the extent necessary to perform the Services and at no additional cost to Valleywise Health, to fully familiarize itself with the special and/or unique qualities and/or requirements of the Services, the Project, the Project site, and Valleywise Health. Unless provided for in the Project Order or otherwise included within the Scope of Services under a Project Order, Design Professional shall not be required to undertake or perform a geotechnical investigation, materials sampling or testing, construction cost estimating, or other special investigation of existing conditions unless the same is included in the Scope of Services. Valleywise Health determination as to the level of quality required, and on all aesthetic issues, shall be final and binding.

18.3 SERVICES

18.3.1 Design Professional shall, without limitation provide the following Services:

18.3.1.1 Prepare the Deliverables and provide the Services as more specifically described in each Design Professional Contract or Project Order.

18.3.1.2 Prepare the Deliverables and provide the Services utilizing a BIM system as defined in Section 2 above and in accordance with the BIM Performance Requirements as set forth in Appendix 2.

18.3.1.3 If requested in writing by Valleywise Health or included in the Scope of Services for the Project Order, prepare and submit a detailed estimate of the total cost of the Project through completion in such detail and format as required by Valleywise Health.

18.3.1.4 Follow and comply with the Arizona Utility Coordinating Committee (AUCC) Public Improvement Project Guide as directed by Valleywise Health.

18.3.1.5 Attend Project Team meetings, Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. Design Professional attendance at design or other meetings in which Design Professional is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of this Master Contract for default. When requested by Valleywise Health, Design Professional shall attend, make presentations at, and participate as may be appropriate in, public agency and or community meetings relevant to the Project. Design Professional shall provide drawings, schedule diagrams, budget charts and other materials describing the Project when their use is required or appropriate in any such public agency meetings.

18.3.1.6 For submittal guidelines, Design Professional shall categorize scope as outlined in Section 4.7 above.

18.3.2 General Conditions and Requirements.

18.3.2.1 Design Professional shall perform the Services required by, and in accordance with this Master Contract and as outlined in the applicable Project Order to the satisfaction of the Project Manager, in full compliance with the General Conditions.

18.3.2.2 In performance of the Services and preparing the Deliverables, the Design Professional shall fully comply with all applicable Laws, Regulations, or Legal Requirements applicable to Valleywise Health, the particular Project and the Master Contract, including, without limitations those set forth on in Appendix 1 to the General Conditions and the Exhibit C attached to the applicable Project Order, including without limitation, in full comply with the Americans with

Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements, including without limitation compliance with the 2010 regulations governing implementation of the ADA.

18.3.3 Design Within Funding Limitations. Design Professional shall accomplish the Services so that the Construction Contract for the Project may be bid and awarded by Valleywise Health at a total Construction Contract Price that does not exceed the Estimated Construction Contract Price plus ten percent (10%), as set forth below:

18.3.3.1 The Estimated Construction Contract Price for the Project shall be set forth in each Project Order.

18.3.3.2 If the lowest responsive and responsible bid or proposal Construction Contract Price exceeds the Estimated Construction Contract Price, Design Professional shall perform such redesign and other Services as are necessary to permit the rebidding and award of the construction contract for the Project within the Estimated Construction Contract Price (collectively the "Redesign Services"). The Redesign Services shall be performed at no additional cost to Valleywise Health, unless Valleywise Health and Design Professional agree that the cause of the Estimated Construction Contract Price being exceeded are beyond the reasonable control of Design Professional and could not have been anticipated by Design Professional (such as unanticipated material changes in the scope of the Project by Valleywise Health; unknown, unusual and not reasonably anticipated material existing conditions; or significant and unforeseen increases in construction and/or material costs.

18.3.3.3 Design Professional shall promptly (and in no event later than finalization and publication of the request for bids, request for proposals, or request for statements of qualifications, for the construction of the Project) advise Valleywise Health' Project Manager in writing as soon as Design Professional believes, or should realize, that the design for the Project will likely cause the Estimated Construction Contract Price to be exceeded. Failure to give timely notice pursuant to this subsection will constitute a waiver of Design Professional's right to assert a claim for additional compensation for any Redesign Services.

18.3.4 Service Phases. As set forth on a Project Order the Design Professional may be required to provide some or all of the following Services generally described as:

1. Schematic Design Phase Services.
2. Design Development Phase Services.
3. Construction Documents Phase Services.
4. Procurement Phase Services; and/or
5. Construction Phase Services.

Design Professional shall not commence the next Phase of Services until Valleywise Health has accepted the preceding Phase of Services without the prior written authorization by Valleywise Health to commence that Phase.

18.3.4.1 Schematic Design Phase Services (if applicable).

18.3.4.1.1 Design Professional shall review the program and other information furnished by Valleywise Health, and shall Laws, Regulations, or Legal Requirements applicable to the Design Professional's services.

18.3.4.1.2 Design Professional shall prepare a preliminary evaluation of Valleywise Health ' program, schedule, budget for the Cost of the Work, Project Site, and the proposed procurement or delivery method and other Project information, each in terms of the other, to ascertain the requirements of the Project. Design Professional shall Valleywise Health of: (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

- 18.3.4.1.3 Design Professional shall present its preliminary evaluation to Valleywise Health and shall discuss with Valleywise Health alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. Design Professional shall reach an understanding with Valleywise Health regarding the requirements of the Project.
- 18.3.4.1.4 Based on the Project's requirements agreed upon with Valleywise Health, the Design Professional shall prepare and present for Valleywise Health's approval a preliminary design illustrating the scale and relationship of the Project components.
- 18.3.4.1.5 Based on Valleywise Health's approval of the preliminary design, the Design Professional shall prepare Schematic Design Documents for vs approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections, and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- 18.3.4.1.6 Design Professional shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with v s program, schedule and budget for the Cost of the Work. Valleywise Health may obtain other environmentally responsible design services under Article 4.
- 18.3.4.1.7 Design Professional shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with Valleywise Health's program, schedule and budget for the Cost of the Work.
- 18.3.4.1.8 Design Professional shall submit to Valleywise Health an estimate of the Cost of the Work prepared in accordance with Section 18.3.1.3 above.
- 18.3.4.1.9 Design Professional shall submit the Schematic Design Documents to Valleywise Health, and request Valleywise Health's written approval.
- 18.3.4.2 Design Development Phase Services (if applicable).
 - 18.3.4.2.1 Based on Valleywise Health's approval of the Schematic Design Documents (if applicable), and on Valleywise Health's Written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design Professional shall prepare Design Development Documents for Valleywise Health's written approval. Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.
 - 18.3.4.2.2 Design Professional shall update the estimate of the Cost of the Work.
- 18.3.4.2 Design Professional shall submit the Design Development documents to Valleywise Health, advise Valleywise Health of any adjustments to the estimate of the Cost of the Work, and request Valleywise Health's written approval.
- 18.3.4.3 Construction Documents Phase Services (if applicable).
 - 18.3.4.3.1 Based on Valleywise Health's written approval of the Design Development Documents, and on Valleywise Health's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design Professional shall prepare Construction

- Documents for Valleywise Health's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Valleywise Health and Design Professional acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples, and other similar submittals, which the Design Professional shall review in accordance with Section 3.6.4.
- 18.3.4.3.2 Design Professional shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.
- 18.3.4.3.3 During the development of the Construction Documents, the Design Professional shall assist Valleywise Health in the development and preparation of (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between Valleywise Health and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). Design Professional shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.
- 18.3.4.3.4 Design Professional shall update the estimate for the Cost of the Work.
- 18.3.4.3.5 Design Professional shall submit the Construction Documents to Valleywise Health, advise Valleywise Health of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request Valleywise Health's written approval.
- 18.3.4.4 Procurement Phase Services (if applicable).
- 18.3.4.4.1 If requested by Valleywise Health, Design Professional shall assist Valleywise Health in bidding the Project by:
- .1 Assisting in the preparation of the solicitation documents.
 - .2 Participating in a pre-response conference for prospective bidders.
 - .3 Assisting in preparing responses to questions from prospective respondents and providing clarifications and interpretations of the solicitation documents in the form of addenda; and
 - .4 Participating in the evaluation of responses, all, as directed by Valleywise Health.
- 18.3.4.4.2 If requested by Valleywise Health, Design Professional shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.
- 18.3.1.6 Construction Phase Services (if applicable).
- 18.3.4.5.1 If the Services include Construction Phase Services and/or contract administration during the construction of the Project, provide, at no additional cost to Valleywise Health, such Services, including without limitation inspections, attending meetings, responses to requests for information, review of submittals, generation of punch lists, and clarification of drawings, designs, and/or specifications as may be necessary to complete the Project, including supporting the implementation, execution and acceptance of the Contractor's or CMAR's commissioning work, and/or as may be reasonably requested by Valleywise Health. All construction phase Services provided by Design Professional shall comply and be consistent with the requirements of the General Conditions applicable to Design Professional, the Contractors involved in the Project, and Valleywise Health.
- 18.3.4.5.2 Evaluation of the Work. Design Professional shall visit the Site at intervals appropriate to the stage of construction, or as otherwise required by Valleywise Health, to become familiar with the progress and quality of the portion of the Work completed, and to determine, if the Work observed is being performed in a manner indicating that the Work is being constructed in accordance with the Contract Documents. Design Professional shall keep Valleywise Health

fully informed about the progress and quality of the portion of the Work completed, and report to Valleywise Health: (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor; and (2) defects and deficiencies observed in the Work. Unless otherwise specified in a Project Order, Design Professional shall conduct a minimum of one (1) site visit per month in accordance with this Section is included in Design Professionals basic services under the Contract.

18.3.4.5.3 Certificates for Payment. Design Professional shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. Design Professional's certification for payment shall constitute a representation to Valleywise Health, based on Design Professional's evaluation of the Work as provided in Section 18.3.4.5.2 above and on the data comprising the Contractor's Application for Payment, that, to the best of Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject: (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) to results of subsequent tests and inspections; (3) to correction of minor deviations from the Contract Documents prior to completion; and (4) to specific qualifications expressed by Design Professional. Design Professional shall maintain a written record of the Applications and Certificates for Payment, in the form required by Valleywise Health.

18.3.4.5.3 Payment Evaluation. Design Professional shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. Design Professional's certification for payment shall constitute a representation to Valleywise Health, based on Design Professional's evaluation of the Work as provided in Section 18.3.4.5.2 above and on the data comprising the Contractor's Application for Payment, that, to the best of Design Professional's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject: (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections; (3) to correction of minor deviations from the Contract Documents prior to completion; and (4) to specific qualifications expressed in writing by Design Professional.

18.3.4.5.4 Submittals.

18.3.4.5.4.1 Design Professional shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. Design Professional's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in Design Professional's professional judgment to permit adequate review and in compliance with all applicable time limitations and the Project Schedule. Valleywise Health shall have the right to input on and/or approve or reject any submittals Valleywise Health chooses.

18.3.4.5.4.2 In accordance with Design Professional-approved submittal schedule, Design Professional shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Design Professional, of any construction means, methods, techniques, sequences, or procedures. Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

18.3.4.5.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, Design Professional shall specify the appropriate performance and design criteria that such services must satisfy. Design Professional shall review shop drawings and other submittals

related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to Design Professional. Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

- 18.3.4.5.4.4 Design Professional shall review and respond to requests for information about the Contract Documents. Design Professional shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. Design Professional's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness and in compliance with all applicable time limitations and the Project Schedule. If appropriate, Design Professional shall prepare and issue supplemental Drawings and Specifications in response to requests for information.
- 18.3.4.5.4.5 Design Professional shall maintain a written record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents, in the form reasonably required by Valleywise Health and/or the Construction Lender and provided to Design Professional.
- 18.3.4.5.5 Changes in the Work. Subject to the provisions the provisions of the Contract Documents related to Changes and Change Orders, upon Valleywise Health request, Design Professional shall prepare Change Orders and Construction Change Directives for Valleywise Health' approval and execution in accordance with the Contract Documents. Design Professional shall maintain written records relative to changes in the Work in sufficient detail to identify the changes and their impact on the Project, Valleywise Health budget and/or the Project Schedule.
- 18.3.4.5.6 Project Completion. Design Professional shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to Valleywise Health, for Valleywise Health review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Design Professional's inspections shall be conducted with the Project Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.
- 18.3.4.5.7 Record Documents. If requested by Valleywise Health, provide Valleywise Health with full "Record" and/or "As-Built" drawings at the completion of the Project, in such form and detail as Valleywise Health may require, and in compliance with the BIM Requirements in Appendix 2 to these General Conditions.
- 18.3.4.5.8 One (1) Year Inspection. Upon request of Valleywise Health, and prior to the expiration of one (1) year from the date of Substantial Completion, Design Professional shall, without additional compensation, participate as a member of the Project Team in the One (1) Year Inspection as set forth in Section 4.9.12 above. Design Professional is primarily responsible for observation, evaluation of the conditions observed during, following up on any items identified and/or needing additional follow-up, and documenting the results of the One (1) Year Inspection.
- 18.3.9 Additional Services.
- 18.3.9.1 Additional Services which are outside the scope of the Services required under the Contract Documents shall not be performed by Design Professional without prior written authorization from Valleywise Health. Additional Services, when authorized by an executed written Change Order under Section 9 of the General Conditions, shall be compensated for by a fee mutually

agreed upon in such written Change Order between Valleywise Health and Design Professional.

- 18.3.9.2 No claim for additional Services shall be allowed by Valleywise Health except as provided herein. Services provided by Design Professional without prior written authorization from Valleywise Health shall be at Design Professional's sole jeopardy, cost, and expense, and Design Professional hereby agrees that without prior written authorization no claim for compensation for such Services shall be made, and Valleywise Health shall not be responsible for such costs. Nor shall Valleywise Health pay for any costs not expressly designated reimbursable in the applicable Project Order or the written authorization for the additional Services.
- 18.3.10 Corrections. Design Professional shall promptly provide, at no additional cost to Valleywise Health, any and all corrections, modifications, additional documents, or other items that may be necessary to correct any errors and/or omissions in the documents, designs, specifications, and/or drawings provided by Design Professional.
- 18.3.11 Key Personnel. Design Professional shall perform the Services under this Master Contract using only those firms, team members and individuals designated by Design Professional consistent with Design Professional's SOQ agreed to in the applicable Project Order, and/or as otherwise approved by Valleywise Health in accordance with the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager. Any substituted personnel shall have the same or higher qualifications as the personnel being replaced.
- 18.3.12 Continuation of Obligations. The completion, quality and accuracy of the Services and the Deliverables provided to Valleywise Health under the Services directly impact Design Professional's performance of its obligations under the Contract Documents, and Design Professional's obligations and duties continue throughout the entire Project. Therefore, all of Design Professional's obligations, duties, and warranties in relation to the Services and deliverables survive and apply with equal force to the Construction Phase. Any breach of any of Design Professional's duties, obligations, or warranties under the Services shall likewise be considered a breach of the Contract.

18.4 USE AND OWNERSHIP OF DOCUMENTS

Upon execution of this Master Contract, Design Professional and all design professionals and sub-consultants working under or for Design Professional, hereby grant to Valleywise Health an irrevocable, exclusive, royalty-free perpetual license to reproduce and use any and all data, documents (including electronic documents and files), designs, drawings and specifications prepared or furnished by Design Professional pursuant to this Master Contract ("the Instruments of Service"), for the purposes of construction and completion of the Project, including for the use, sales, marketing, repair, maintenance, modification, expansion, remodeling and/or further development of the Project or any portion thereof (including making derivative works from Design Professional's Instruments of Service), or for construction of the same type of Project at other locations, by Valleywise Health and others retained by Valleywise Health for such purposes. This license shall extend to those parties retained by Valleywise Health for such purposes, including other design professionals. The license granted hereunder shall include all things included in the definition of "Architectural Works" as used in the U.S. Architectural Works Copyright Protection Act, as amended from time to time. Design Professional shall obtain, in writing, similar non-exclusive licenses from its design professionals, and sub-consultants. The license granted hereunder shall survive any termination of this Master Contract and/or of any project-specific Contract, and the completion of the Project. Upon completion of the Project and/or termination of the Contract for any reason, Design Professional shall deliver to Valleywise Health full sized and usable copies (including any and all CAD, **BIM**, and/or computer files) of all data, documents, designs, drawings and specifications generated by Design Professional, including those generated by any suppliers, subcontractors or sub-consultants. Valleywise Health shall retain all rights to and ownership of all documents, designs, drawings, specifications, and/or styles provided to Design Professional by Valleywise Health in relation to the Contract and the Project, and Design Professional shall not utilize any such material in relation to any other work or project. Design Professional may re-use any standard specifications and details included in the Instruments of Service that were not developed by Design Professional specifically for the Project.

18.5 INFORMATION PROVIDED BY VALLEYWISE HEALTH

Valleywise Health shall provide to Design Professional information regarding requirements for the Project, including relevant budget information, Project schedules, identities of Project participants, and related designs, drawings, and specifications. Design Professional shall be entitled to rely on such information furnished by Valleywise Health, provided that Design Professional shall promptly notify Valleywise Health, in writing, of any information that Design Professional believes is missing, unclear or insufficient for the successful completion of the Project and the Services.

18.6. TIME

18.6.1 Time is of the essence. Time is of the essence of this Master Contract and each Project Order.

Design Professional shall complete all Services within the schedule set forth in the Project Order, and Design Professional shall strictly comply with said schedule and failure to do so shall be a material breach of the Contract.

18.6.2 Response by Design Professional. Design Professional shall promptly respond to any requests for approvals, information or clarification within sufficient time (and in no event more than five (5) calendar days after receiving the request) to allow Valleywise Health to timely respond to the contractor(s) and/or other parties involved in the Project, and so as to not delay the Project.

18.6.3 Schedule. If requested by Valleywise Health, Design Professional shall prepare and present to Valleywise Health a Schedule in a form and in such detail as required by Valleywise Health and in accordance with the requirements set forth in the Project Order.

18.6.4 Long Lead Time Items. If within the general scope of the Services, Design Professional shall identify all long lead time designs, studies, Deliverables, materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team.

18.7 CONTRACT PRICE

18.7.1 Fee. In exchange for the Design Professional's full, timely and acceptable performance of the Services under the Project Order, and subject to all terms of the Master Contract, Valleywise Health will pay Design Professional for the Services in the amounts, on the basis, and in the manner set forth in each Project Order.

18.7.2 Reimbursable Expenses. No reimbursable expenses or costs of any kind shall be paid by Valleywise Health unless expressly approved by Valleywise Health in writing before they are incurred. Any approved reimbursable expenses will be paid at the actual cost without any markup. No costs will be paid except those specifically set forth in the Project Order, reimbursement for any costs is subject to Section 15.3 of the General Conditions and in no event shall payment be made for items which are designated as "Cost Not To Be Reimbursed" in Section 15.3.2 of the General Conditions.

18.7.3 Taxes. Design Professional shall be solely responsible for any and all tax obligations which may arise out of or result from Design Professional's performance of the Contract. Valleywise Health shall have no obligation to pay any amounts for taxes, of any type, incurred by Design Professional.

18.8 PAYMENT FOR SERVICES

18.8.1 Design Documents. For Services involving the preparation of any design documents:

18.8.1.1 Prior to approval of the preliminary documents (30% plans), the billed amount shall not exceed 40% of the Contract Price.

18.8.1.2 Prior to approval of the final design documents deliverable under the Services, the billed amount shall not exceed 90% of the Contract Price.

- 18.8.2 If the Services include the preparation of studies, design concepts, or other investigations, progress payments shall not exceed 90% of the Contract Price prior to submittal of the final report deliverables.
- 18.8.3 Additional services included in the Services, such as bidding assistance, shop drawing review, contract documents interpretation, etc., shall be paid for based on the actual completed services.
- 18.8.4 Payment Documentation. As a necessary precondition to any payment under the Contract, Valleywise Health may require Design Professional to provide such certifications; lien waivers (in statutory form); and proofs of performance, costs and/or percentage of completion as may be reasonably required by Valleywise Health, to ensure that payment is then due and owing pursuant to the payment terms set forth in this Master Contract and/or any Project Order.
- 18.8.5 Monthly Reports. If required by Valleywise Health, monthly progress reports by the Design Professional shall include a summary of costs billed by Service category and task and shall be formatted to permit comparison of actual- to-proposed costs and a breakdown of costs incurred by each subconsultant.
- 18.8.6 Payment Not Acceptance. Payment by Valleywise Health does not constitute acceptance by Valleywise Health of the Services or Design Professional's performance, nor does payment constitute a waiver of any rights or claims by Valleywise Health.
- 18.9 PERFORMANCE TO CONTINUE DURING DISPUTES**
If a dispute over payment arises, and during all claims resolution proceedings, including mediation and arbitration, Design Professional shall continue to fully render the Services in a timely manner.

SECTION 19 — APPENDICES

Appendix 1— Policies/Requirements Applicable to Valleywise Health
Projects Appendix 2 — Building Information Modeling (BIM) Requirements