

**REQUEST FOR QUALIFICATIONS
FOR
DESIGN-BUILD SERVICES
FOR
THE VALLEYWISE HEALTH
ROOSEVELT CAMPUS PARKING GARAGE 1**

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Title: The Valleywise Health Roosevelt Campus Parking Garage 1

Solicitation Number: 90-26-309-RFQ

Release Date: Wednesday, June 24, 2026

Advertisement Date: Thursday, June 25, 2026

Site Visit to be held at: Friday, July 10, 2026 @ 8:00 AM
Gather @ East Side of Virginia C. Piper Pavillion

Final Date for Inquiries: Wednesday, July 15, 2026 @ 11:00 AM

RFQ Due Date and Time: Tuesday, July 28, 2026 @ 2:00PM

Notice of Intent to Award: Tuesday, September 1, 2026

Anticipated Award Date: Monday, November 2, 2026

Procurement Officer: Donna.Benavidez@valleywisehealth.org

*This Project is part of the PROPOSITION 409 Capital Improvement Bond Program; the selected Design-Builder for this Project will NOT be precluded from submitting and receiving awards for any other Proposition 409 Capital Improvement Bond Program projects, nor be given any preference for the award of any other project contracts.

**The District reserves the right to amend the solicitation schedule, as necessary.

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PART I. RFQ PROCESS; AWARD OF AGREEMENT

1.1 Purpose; Scope of Work. The Maricopa County Special Health Care District, d/b/a Valleywise Health (the “District” and/or “Valleywise Health”) is issuing this Request For Qualifications (this “RFQ”) seeking statements of qualifications (“SOQ”) from qualified, licensed Design-Build firms (“Design-Build Firms”) interested in providing professional design-build construction services for The Valleywise Health Roosevelt Campus Parking Garage 1 Project (the “Project”) and other items as deemed necessary by the District (collectively, the “Services”), as more particularly described in the attached Scope of Work (Exhibit A). This will be a qualifications-based selection process as authorized by Arizona Revised Statutes (“A.R.S.”) § 34-601 *et. seq.* The District will evaluate SOQs and conduct oral interviews with shortlisted firms as described in Section 1.15. The District will select the highest ranked Design-Build Firm based solely on the SOQ and oral interview results, and no separate technical or price proposal is required under this RFQ.

1.2 Preparation/Submission of SOQ. Design-Build Firms are invited to participate in the competitive selection process for the Services outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

A. Irregular or Non-responsive SOQ. The District may consider as “irregular” or “non-responsive” and reject any SOQ not prepared and submitted in accordance with this RFQ, or any SOQ lacking sufficient information to enable the District to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions may be cause for rejection. An SOQ may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the District, any of the following are true:

- (1) Design-Build Firm does not meet the minimum required skill, experience or requirements to perform or provide the Service.
- (2) Design-Build Firm has a past record of failing to fully perform or fulfill contractual obligations.
- (3) Design-Build Firm cannot demonstrate financial stability.
- (4) Design-Build Firm’s SOQ contains false, inaccurate or misleading statements that, in the opinion of an authorized designee of the District, are intended to mislead the District in its evaluation of the SOQ.

B. Required Submittal. The SOQ shall be a maximum of 60 single sided pages or 30 double sided pages to address the SOQ criteria (excluding cover letter, resumes, Design-Build Firm Information Form, and Past Performance Verification Evaluation Submittals (Exhibit B-1), but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2” x 11”) with criteria

information shall be counted. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or SOQ criteria responses. Design-Build Firms are encouraged to utilize recyclable materials and endeavor to be considerate of the environment in preparation of the SOQ. The minimum allowable font for the SOQ is 11 pt, Arial or Times New Roman. Failure to adhere to the page limit, size and font criteria may result in the SOQ being determined non-responsive. Each SOQ shall be submitted with the following documents:

- (1) Cover letter with a signature by a person authorized to bind the Design-Build Firm. Submittals without a cover letter with a signature by a person authorized to bind the Design-Build Firms may be determined non-responsive.
- (2) Design-Build Firms Information Form, with signature, including Authorization to Submit a Response, Required Certifications, and Organizational Information Form.
- (3) Past Performance Verification Evaluation Submittals (Exhibit B-1).
- (4) Project Schedule.
- (5) Resumes, Licenses and Certifications (if any).
- (6) Acknowledgment page, with a signature, for any Addendum received.

C. Design-Build Firm Responsibilities. All Design-Build Firms shall (1) examine the entire RFQ, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting an SOQ and (4) submit the entire SOQ by the official SOQ Due Date and Time. A late SOQ will not be accepted. A Design-Build Firm submitting a late SOQ shall be notified. Negligence in preparing an SOQ shall not be good cause for withdrawal after the SOQ Due Date and Time.

D. Online Submittals Only. All SOQ shall be submitted electronically via the following [ShareFile link](#). Submittals submitted through the ShareFile link shall be clearly marked with the RFQ number and the title “The Valleywise Health Roosevelt Campus Parking Garage 1.” The District is not responsible for the pre-opening of, post-opening of, or the failure to open, any SOQ not properly addressed or identified.

E. Address. All SOQ shall be submitted electronically via the [ShareFile link](#). The SOQ must be received by the SOQ Due Date and Time indicated on the cover page of this RFQ. Telegraphic (facsimile), electronic (e-mail) or mailgram SOQ will not be considered.

F. Amendment/Withdrawal of SOQ. At any time prior to the specified SOQ Due Date and Time, a Design-Build Firm (or designated representative) may amend or withdraw its SOQ. Any erasures, interlineations, or other modifications in the SOQ shall be initialed by the authorized person signing the SOQ. Facsimile, or mailgram SOQ amendments or withdrawals will not be considered. No SOQ shall be altered, amended or withdrawn after the specified SOQ Due Date and Time.

1.3 Selection; Optional Proposals Preparation. The District may enter into negotiations with the highest qualified Design-Build firm on the final list pursuant to this solicitation or, in the alternative, issue a request for proposals to the firms on the final list. Pursuant to A.R.S. § 34-603, the District shall award a fee to each final list offeror who provides a responsive, but unsuccessful, proposal equal to four-tenths of one percent of the Design-Build Firm's project final budget for design and construction. The District shall pay the stipulated fee to each offeror within ninety days after the award of the initial contract or the decision not to award a contract. The District retains the right to use any ideas or information contained in the SOQ in connection with any contract awarded for the Project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the offeror. Notwithstanding the other provisions of this paragraph, an offeror may elect to waive the stipulated fee. If an offeror elects to waive the stipulated fee, the District will not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the District from using any idea or information if the idea or information is also included in a SOQ of an offeror that accepts the stipulated fee.

1.4 No bid bond is required in connection with the submission of an SOQ under this RFQ. If the District elects, pursuant to Section 1.15.3, to issue a Request for Proposals ("RFP") to the Design-Build Firms included on the final list, each proposer shall submit bid security with its proposal in accordance with A.R.S. § 34-608 and the requirements set forth in the RFP. The amount and acceptable form of the required bid bond shall be identified in the RFP and shall be based upon the District's construction budget for the Project, excluding design services, pre-construction services, finance services, maintenance services, operations services, and other non-construction services, as set forth in Title 34 and the RFP. Failure to provide the required bid bond with a proposal submitted in response to the RFP may result in rejection of the proposal as non-responsive

1.5 Payment and Performance Bonds. The Design-Build Agreement will require a payment and performance bond satisfactory to the District, executed by a surety company authorized to do business in the State of Arizona, in an amount equal to one hundred percent of the amount specified in the contract.

1.6 Insurance. All insurance requirements for the final Design-Build Agreement entered into by the parties shall provide insurance coverage and indemnification language consistent with the District's Risk Management requirements, as further described in the attached form of Design-Build Agreement, unless otherwise agreed to at the time of contract award.

1.7 Inquiries & Site Visits.

A. Written Inquiries Required. Any question related to the RFQ shall be in writing and submitted by email to the Procurement Officer, by the close of business on the Final Date for inquiries indicated on the cover page of this RFQ. Any inquiries related to this RFQ shall refer to the title and number, page and paragraph. Any Design-Build Firm found to be communicating with any member of District in any manner than otherwise provided for in this RFQ shall be prohibited from submitting an SOQ, or if an SOQ is received, such SOQ shall be deemed non-responsive.

B. Inquiries Answered. All inquiries must be made in conformance to this Paragraph 1.7 of this solicitation document. The Procurement Officer shall provide a compilation of all questions received in writing with official answers that will be made available on the District's solicitation webpage. The District shall endeavor to post the compilation not later than five days after the inquiry deadline.

C. Site Visits. Any Design-Build Firm wishing to conduct a site visit prior to submitting its SOQ shall attend the scheduled Site Visit on the scheduled day, time as listed on the cover sheet of this RFQ. No Design-Build Firm may access the site except at the date, time, and in the manner authorized by the District. All costs associated with the site visit shall be borne by the Design-Build Firm.

1.8 Addenda. Any addendum issued as a result of any change in this RFQ shall become part of the RFQ and must be acknowledged in the SOQ submittal. Failure to indicate receipt of the addendum may result in the SOQ being rejected as non-responsive. It shall be the Design-Build Firm's responsibility to check for addenda issued to this RFQ. Any addendum issued by the District with respect to this RFQ will be posted on the District's solicitation webpage.

1.9 Cancellation of RFQ. The District reserves the right to cancel this RFQ, reject in whole or in part, any or all submittals or determine not to enter into one or more of the multiple contracts as specified in the solicitation if the District determines in its absolute and sole discretion that such action is in the best interest of the District.

1.10 Inspection of Records/Audit. The District may, at reasonable times, inspect the place of business, operations, equipment or records of a contractor or subcontractor that is related to the performance of any contract awarded or to be awarded by the District. The District is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the contract or subcontract. The contractor shall maintain the books and records for a period of six (6) years from the date of final payment under the contract and by the subcontractors for a period of six (6) years from the date of final payment under a subcontract, unless a different period is required by law.

1.11 Public Record. All SOQ submittals shall become the property of the District and shall become a matter of public record available for review, subsequent to the award notification, in accordance with law.

1.12 Confidential Information. If a Design-Build Firm believes that a SOQ or protest

contains information that should be withheld from the public record, a statement advising the Procurement Officer of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the Design-Build Firm as confidential shall not be disclosed until the Procurement Officer, or authorized designee, makes a written determination. The Procurement Officer or authorized designee shall review the statement and information with the District's Attorney and shall determine in writing whether the information shall be withheld. If the District's Attorney determines that it is proper to disclose the information, the Procurement Officer shall inform the Design-Build Firm in writing of such determination.

1.13 Design-Build Firm Licensing and Registration. Prior to the award of the Agreement, the successful Design-Build Firm shall be registered with the Arizona Corporation Commission and authorized to do business in Arizona. The Design-Build Firm shall provide licensure information with the SOQ. Corporations and limited liability companies shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

1.14 Certification. By submitting an SOQ, the Design-Build Firm certifies:

1.14.1 No Collusion. The submission of the SOQ did not involve collusion or other anti-competitive practices.

1.14.2 No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

1.14.3 No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a District employee, officer or agent in connection with the submitted SOQ. It (including the Design-Build Firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating a bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, District officials, the District Management and/or and other District staff. All inquiries must be addressed to the District. Any attempt to influence the selection process by any means shall void the submitted SOQ and any resulting Agreement.

1.14.4 Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Agreement.

1.14.5 No Signature/False or Misleading Statement. The signature on the cover letter of the SOQ and the Design-Build Firm Information Form is genuine, and the person signing has the authority to bind the Design-Build Firm. Failure to sign the cover letter and the Design-Build Firm Information Form, or signing either with a false or misleading statement, shall void the submitted SOQ and any resulting Agreement.

1.14.6 Design-Build Agreement. By submitting an SOQ, the Design-Build Firm represents that it has reviewed the attached sample Design-Build Agreement and is prepared to execute an agreement in substantially that form if selected for award, subject only to those exceptions expressly identified in its SOQ. Any requested exceptions, deviations, qualifications, or proposed revisions to the sample Design-Build Agreement must be specifically and clearly stated in the SOQ, with the applicable section identified and proposed substitute language provided. Any exception not expressly stated in the SOQ shall be deemed waived. The District reserves the right, in its sole discretion, to reject any requested exception, to require execution of the agreement in a form acceptable to the District, and to determine that an SOQ containing requested exceptions is non-responsive or otherwise not in the District's best interests.

1.15 Award of Agreement.

1.15.1 Evaluation; Selection. A Selection Committee composed of representatives from the District will conduct the selection process according to the schedule on the cover page of this RFQ. The Selection Committee will evaluate and score the SOQs using the criteria and weighting shown in PART II and will develop a shortlist and preliminary ranking. The Selection Committee will contact Design-Build Firms who are selected for interview and schedule a pre-interview conference to discuss the format and schedule of interviews. The Selection Committee will then conduct oral interviews with the shortlisted firms. Following completion of interviews, the Selection Committee will establish the final ranking and select the highest ranked Design-Build Firm based solely on the SOQ and oral interview results. The Selection Committee will develop a final list of at least three (3) and not more than five (5) highest ranked Design-Build Firms. If there are less than three (3) firms that submit SOQs, the number of firms ranked will be adjusted accordingly.

1.15.2 Oral Interviews. The District shall conduct oral interviews with the Design-Build Firms selected for the final list of at least three (3) and not more than five (5) highest-ranked firms. Interviews will be used to clarify information contained in the SOQ and to evaluate the firms' understanding of the Project, approach, and key personnel. The District will provide interview instructions, format, and scheduling information to the shortlisted firms. The results of the oral interviews will be considered in the final ranking. The District reserves the right, in its sole discretion, to conduct interviews with fewer than all shortlisted firms or to waive interviews altogether.

1.15.3 Form of Agreement. The selected Design-Build Firm will be required to execute the District's Design-Build Agreement in a form acceptable to the District's Attorney. A sample of the Design-Build Agreement is included with this RFQ. If the District is unsuccessful in negotiating an Agreement with the highest ranked Design-Build Firm, the District may negotiate with the second, then third, highest

ranked Design-Build Firm until an Agreement is executed. Or, in the alternative, the District may issue a request for proposals to all Design-Build firms on the final list. In either case, District Board approval is required prior to any award and execution of the Design-Build Agreement.

1.15.4 Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFQ, the District expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all SOQ or portions thereof and (3) cancel or reissue the RFQ.

1.15.5 Protests. Any Design-Build Firm may protest this RFQ, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the District's Procurement Code and applicable law.

1.16 Offer. An SOQ submittal is an offer to contract with the District based upon the terms, conditions and specifications contained in this RFQ and the Design-Build Firm's responsive SOQ, unless any of the terms, conditions, or specifications are modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Design-Build Firm has signed, and the District has approved, a Design-Build Agreement between the District and the Design-Build Firm in the form acceptable to the District's Attorney. A sample Design-Build Agreement is included herein.

1.17 Conflict of Interest. It shall be a breach of ethical standards for any employee or agent acting on behalf of the District to directly or indirectly participate in or benefit from a procurement when the employee, agent or his immediate family has a financial interest in the business or organization, or has a potential for financial gain as a direct result of their actions. The Design-Build Firm shall insure that it complies with the District's conflict of interest policy.

PART II. STATEMENT OF QUALIFICATIONS FORMAT; SCORING

2.1 Evaluation Process. Each submittal will be reviewed for compliance with the submittal requirements and scored by the Selection Committee.

2.2 SOQ Format and Scoring. The SOQ shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate and rank each SOQ based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criterion and not the minimum number that the Selection Committee may award.

A. General Information - 5 pts.

- (1) Cover letter as described in Subsection 1.2(B) (Required Submittal).
- (2) Provide Design-Build Firm identification information. Explain the Design-Build Firm's legal organization including the legal name, address, identification number and legal form of the Design-Build Firm (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If a limited liability company, provide the name of the member or members authorized to act on the company's behalf. If the Design-Build Firm is a wholly owned subsidiary of another company, identify the parent company. If the corporation is a nonprofit corporation, provide nonprofit documentation. Provide the name, address and telephone number of the person to contact concerning the SOQ.
- (3) Identify the location of the Design-Build Firm's principal office and the local work office, if different from the principal office. Include any documentation that supports the Design-Build Firm's authority to provide services in Arizona.
- (4) Provide a general description of the Design-Build Firm that is proposing to provide the Services, including years in business.
- (5) Identify any contract or subcontract held by the Design-Build Firm or officers of the Design-Build Firm that has been terminated within the last five years. Briefly describe the circumstances and the outcome.
- (6) Identify any claims arising from a contract that resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.
- (7) Identify any performance and/or payment bond claims the Design-

Build Firm has had in the past five years. Briefly describe the circumstances and the outcome.

(8) Provide the Arizona professional and contractor license numbers held by the Design-Build Firm and the key personnel who will be assigned to this Project; indicating if the individual or the firm holds the license. Briefly describe any Registrar of Contractor complaints, if any, against the Design-Build Firm or its key personnel within the past five years.

(9) Design-Build Firm Information Form, with a signature (may be attached as separate appendix).

(10) Design-Build Firm selected as finalists for this Project will be required to provide a statement from a surety company licensed to do business in Arizona with an A.M. Best rating of not less than A- to verify the Design-Build Firm's bonding capacity.

B. Experience and Qualifications - 25 (includes 15 for PPVF) pts.

(1) Design-Build Firm must demonstrate successful completion of at least three similar design-build projects. For the purpose of this Solicitation, "successful completion" means completion of a project within the established schedule and budget and "similar projects" resemble this project in size, nature and scope. Provide a list of at least three organizations for which you successfully completed a similar project. This list shall include, at a minimum, the following information:

- (a) Project description.
- (b) Name of company or organization.
- (b) Contact name, address, phone number and email for the Owner's Project Manager who managed design and construction.
- (c) The roles of each team member on the project.
- (d) The project's contracted and final construction cost.
- (e) The project's original anticipated completion date and actual completion date.

These references will be checked, and it is the Design-Build Firm's responsibility to ensure that all information is accurate and current. Design-Build Firm authorizes the District's representative to verify all information from these references and releases all those concerned from any liability in

connection with the information they provide. Inability of the District to verify references may result in the SOQ being considered non-responsive.

(2) List all Arizona projects, whether completed, ongoing, or selected but not yet under contract, where the Design-Build Firm/team provided services in a design-build project, construction manager at risk, or general construction services in the last three years.

(3) Past Performance Verification Form (“PPVF”) - The District desires to receive feedback on the past performance of your projects. Mail, email or fax a copy of the PPVF (attached as Exhibit B) to Public/Private Agencies, for which you have substantially completed similar work, to complete a copy of the PPVF for three (3) similar projects. The form should be provided to the Owner or Owner’s representative, directly responsible for oversight of the project to complete and submit to the District via email or fax prior to the date and time listed on the form. If your firm has completed previous similar work for the District, you may utilize this experience. If your firm has not completed prior projects with the District, you will not be penalized.

Please list the agency or firm name, address, phone number and contact information for the Agency that will be providing the PPVF on attached Exhibit B-1 and include as an appendix to the SOQ. PPVFs will only be accepted from the Agencies listed on Exhibit B-1. Each completed PPVF form (total of three) that is completed and returned by the due date will be awarded five (5) points towards this category.

Zero points will be awarded for projects:

- If Exhibit B-1 is not included in the SOQ.
- If a PPVF is received after the date and time specified on the form.
- If a project is not listed on Exhibit B-1.
- If a project submitted is not substantially complete.
- If the firm submitting was not the **prime architect/engineer/contractor**.
- If the person responding was not directly responsible for project oversight.

It is the responsibility of the firm submitting the SOQ to ensure that the District receives all of the PPVFs prior to the deadline.

(4) The District's representative may conduct any investigation deemed necessary to determine the Design-Build Firm's ability to perform the project. Design-Build Firm may be requested to submit additional documentation within 72 hours (or as specified) to assist the District in its evaluation.

C. Key Design Positions - 25 pts.

(1) Provide an organizational chart identifying each key personnel member that will render services to the District including title and relevant experience required, including the proposed project manager, construction superintendent, and project staff during design and construction. If personnel change is requested between design and construction, provide a detailed plan for transfer of information.

(2) Identify the home office location of key personnel, length of time with the firm, and the percent of work to be completed locally.

(3) If a subcontractor will be used for all work of a certain type (i.e. precast supplier) include information on this subcontractor. A detailed plan for providing supervision must be included.

(4) Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor (i.e. precast supplier) to be involved in this Project. Résumés should be attached together as a single appendix at the end of the SOQ and will not count toward the SOQ page limit. However, each resume shall not exceed two pages in length.

D. Project Approach - 30 pts.

(1) Discuss your understanding of this Project, identify any major issues and how to address those, and describe the Design Build Firm's approach to performing the required Services in the Scope of Work described in the Scope of Work, including the following processes:

- (a) Site Investigation
- (b) Designing
- (c) Estimating and Cost Control in Design and Construction
- (d) Scheduling Ahead and Recovery
- (e) Energy Efficiency and Sustainability of Project

- (f) Project Management/Team Org in Design and Construction
- (g) Bid Package Management/Long Lead Items
- (h) Minimizing Overhead Costs
- (i) Management of Subcontractors
- (j) Quality Control Transparency Between Designer and Builder
- (k) Safety
- (l) Dispute Resolution

(2) Submit a subcontractor selection plan which meets the requirements of A.R.S. § 34-601 *et. seq.* requirements and discuss the benefits that your selection provides to the Project.

E. Project Schedule - 15 pts.

Provide a project schedule showing key project milestones and deliverables. The schedule shall demonstrate Design-Build Firm's ability to meet the designated milestones as listed below. Assumptions used in developing the schedule shall be identified and at a minimum the proposed schedule shall include the following dates:

- | | | |
|-----|--|------------------|
| (1) | Anticipated Contract Award Date: | November 2, 2026 |
| (2) | Design Notice to Proceed Date: | November 2, 2026 |
| (3) | Construction Notice to Proceed
(Permit/Executed GMP) No Later Than: | October 2027 |
| (4) | Proposed Construction Completion (C of O): | December 2028 |

**Total Possible Points
used for ranking SOQ Submittal:**

100

PART III. DESIGN-BUILD FIRM INFORMATION FORM

By submitting a Statement of Qualifications, the submitting Design-Build Firm certifies that it has reviewed the administrative information and draft of the Design-Build Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto, unless otherwise expressly agreed to by the District in an approved exception.

The Design-Build Firm further agrees to fully comply with all terms and conditions as set forth in the Valleywise Health Procurement Code, and amendments thereto, together with the specifications and other documentary forms herewith made a part of this specific procurement and the person signing the SOQ certifies that he/she is the person in the Design-Build Firm's organization responsible for, or authorized to make, decisions.

The Design-Build Firm further certifies that it is a corporation or other legal entity and that no attempt has been made or will be made by it to induce any other respondents or person to submit or not to submit a response in response to this RFQ.

- ☐ All amendments to this RFQ issued by Valleywise Health have been received by the person/organization below. All amendments are signed and returned with the Response.
- ☐ No amendments have been received.

DESIGN-BUILD FIRM
SUBMITTING SOQ

FEDERAL TAX ID NUMBER

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE

FAX #

CITY STATE ZIP

DATE

WEB SITE: _____

E-MAIL ADDRESS: _____

ARIZONA CORPORATION COMMISSION FILE NO.: _____

ARIZONA REGISTRAR OF CONTRACTORS LICENSE NO.: _____

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

_____	Small Business Enterprise (SBE)
_____	Minority Business Enterprise (MBE)
_____	Disadvantaged Business Enterprise (DBE)
_____	Women-Owned Business Enterprise (WBE)

Has the Design Build Firm been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

If yes, please provide details and documentation of the certification.

ADDENDUM ACKNOWLEDGMENT

RECEIPT OF THE FOLLOWING ADDENDA IS HEREBY ACKNOWLEDGED:

ADDENDUM NUMBER: 1 DATED: _____

ADDENDUM NUMBER: 2 DATED: _____

ADDENDUM NUMBER: 3 DATED: _____

ADDENDUM NUMBER: 4 DATED: _____

ADDENDUM NUMBER: 5 DATED: _____

ADDENDUM NUMBER: 6 DATED: _____

(Respondent)

(Address Line 1)

(Print Name)

(Address Line 2)

(Print Title)

(Phone)

(Signature Required)

(Fax)

(Email Address)

(Federal Taxpayer ID Number)

NON-COLLUSION AFFIDAVIT

STATE OF ARIZONA)
)§
COUNTY OF MARICOPA)

being first duly sworn, deposes and says:

That he is of (Title) (Name of Business)

Responding to the RFQ for the Valleywise Health -Roosevelt Campus Parking Garage 1 Design Builder (DB) in the County of Maricopa, State of Arizona.

That, in connection with the above-mentioned project, neither he/she, nor anyone associated with the aforesaid business, has, directly or indirectly, participated in any collusion, entered into any contract, combination, conspiracy or other act in restraint of trade or commerce in violation of the provisions of A.R.S. § 34-251, Article 4, as amended.

(Signature of Affiant)

Subscribed and sworn to before me this day of , 20 .

My Commission Expires:

(Notary Public)

ORGANIZATIONAL INFORMATION

The Design-Build Firm shall use this document to describe the background of its company, its size and resources and details of relevant experience.

1. Name of Respondent:

dba:

2. To whom should correspondence regarding this contract be addressed?

Individual's Name:

Company Name:

Address:

City/State/Zip:

Phone: _____ Fax: _____ Email address: _____

Contact Person (if different from above):

3. Date business was established:

4. Ownership (e.g., public company, partnership, subsidiary):

5. Primary line of business:

6. Total number of employees:

7. Detail corporate experience within the last five years relevant to the proposed RFQ, including specific details regarding the respondent's experience.

8. Is your agency acting as the administrative agent for any other agency or organization? _____ If yes, describe the relationship in both legal and functional aspects.
9. Does the organization have any uncorrected audit exceptions?

If yes, please explain.
10. Has any state or federal agency ever made a finding of non-compliance with any relevant civil rights requirement with respect to your program?

If yes, please explain.
11. Have there ever been any felony convictions of any key personnel (i.e., Administrator, CEO, Financial Officers, major stockholders or those with controlling interest)?

If yes, please explain.
12. Has anyone in your organization, or has your organization, ever been restricted or, in any way sanctioned, or excluded from participation in any governmentally funded healthcare programs including, but not limited to, Medicare or Medicaid/AHCCCS? _____
If yes, please explain.

EXCEPTIONS TO RFQ REQUIREMENTS AND CONTRACT DOCUMENTS

Design-Build Firms must use this section to state any exceptions to the RFQ requirements and enclosed Contract Documents, and/or any requested language changes to the terms and conditions, contract, etc.

This is the only time Design-Build Firms may contest these issues. Requests for changes after the date responses are due will **not** be considered and could subject the Design-Build Firm to non-award on grounds of non-responsiveness.

Please sign and include this statement with your Response.

I have read Valleywise Health's Contract Provisions and:

- ☐ I accept them
- ☐ I have stated my exceptions and have included them in this Response.
(List all exceptions on a separate page, include the page #, paragraph and sub-paragraph of the exception; provide any alternate language you wish to be considered. Failure to provide this information may deem your response non-responsive).

Printed Name of Authorized Individual

Signature of Authorized Individual

Name of Submitting Organization

Date

**EXHIBIT A
TO
REQUEST FOR QUALIFICATIONS FOR THE
VALLEYWISE HEALTH ROOSEVELT CAMUS PARKING GARAGE 1
DESIGN-BUILD SERVICES**

[Scope of Work]

Intent:

It is Valleywise Health's intent to enter into a Design-Build contract with a qualified Design-Builder to complete the design and construction of the Valleywise Health Roosevelt Campus Parking Garage 1, an eight (8) to nine (9) level parking structure for approximately 1,600 parking spaces at the Roosevelt campus. Refer to attached campus map for site location. The Design-Builder will provide single-point responsibility for both the design and construction of the Project and will retain the Architect/Engineer and other design professionals as part of the Design-Builder's team.

Team Approach:

Valleywise Health intends to use a team-based approach that includes the Valleywise Health team as the owner's representative, the Design-Builder, and the Design-Builder's subcontractors. The District expects these parties to work collaboratively and support one another to advance the Project's overall success. In other words, the goal is a team-oriented, mutually beneficial arrangement. Team members are expected to prioritize the Project's objectives over individual interests. Valleywise Health considers a strong team approach to be a critical qualification for the Design-Builder.

Goal:

Valleywise Health has set the goal for the Project as completion of a quality Project meeting Valleywise Health's needs, within budget, within the time schedule at a reasonable and appropriate cost to and with a reasonable and appropriate fee the Design Builder and each subcontractor. Estimated Construction Budget: \$48,000,000 (approximately \$30,000 per parking space).

Quality of design, construction and execution is paramount. Expectation is that the parking garage will be constructed of either: cast-in-place concrete, precast concrete, or a combination of both depending on the expertise of the qualified teams.

Valleywise Health may elect to award the successful candidate with additional scope of work for Site Utility Relocations/Extensions that is being developed under a separate design contract. The intent would be for the Design Builder to perform constructability reviews, bidding, construction administration, and full construction services for this scope of work while the Design and Pre-Construction services are being performed for the Parking Garage 1 structure. If Valleywise Health elects to award Site Utility Relocation/Extension Package scope of work to the selected candidate, this scope will be awarded under a separate GMP at a mutually agreed upon cost.

The anticipated construction start date of Site Utility Relocations/Extensions work would be late Fall of 2026 with the construction of the Parking Garage to begin late Summer 2027.

Project Description:

As Valleywise Health grows, access and convenience remain top priorities. The new Parking Garage 1 will expand parking capacity on campus and improve the arrival experience for patients, families, and staff connecting both existing and future buildings through a series of shaded and covered pathways providing a seamless path from parking to care.

As part of the Programming/Conceptual design phase, the Design Builder will conduct Feasibility and cost study for a potential 20,000 – 30,000 GSF of additional occupied space within the parking garage to serve as additional office space or other support services such as training rooms and meeting spaces. At the acceptance of the Programming/Conceptual design phase by the District, the District shall make a determination whether to proceed with the additional program spaces, and anticipated construction cost will be adjusted based upon a mutually agreed upon cost.

Highlights:

Expands campus access with modern parking capacity to support Valleywise Health's growing facilities.

Connects directly to the existing Acute Care Hospital, Piper Pavilion (Administration), future Community Health Center, the future Behavioral Health Center for safe, seamless movement through a series of future covered and shaded walkways.

- Supports efficient campus navigation with clear signage, lighting and pedestrian-friendly design.
- Enhances safety and accessibility for staff.
- Enables continued growth by ensuring infrastructure keeps pace with Valleywise Health's future facilities.

Project Scope:

Valleywise Health intends to utilize a Design-Build project delivery process for this project. In this delivery method, the Design-Build Firm/Team is selected using a qualifications-based selection process. Upon selection of the most-qualified Design-Build Firm/Team, Valleywise Health will negotiate a not-to-exceed fee for Pre-Construction Phase services.

DB's Design and Pre-Construction Phase services will include: program verification/conceptual design, schematic design, design development, and construction documentation of the mutually agreed design solution; site surveying; geotechnical investigation; constructability reviews; building systems review and recommendations;

construction scheduling; cost estimating; value engineering; and recommendations for efficient project delivery; and preparation of a Guaranteed Maximum Price (GMP).

After mutual agreement on the GMP, the Design-Build Agreement will be amended to include Construction and Warranty Phase services. If Valleywise Health and the Design-Builder are unable to reach mutual agreement on a GMP that Valleywise Health determines is fair and reasonable, Valleywise Health may terminate the Design-Build Agreement in accordance with its terms. Upon such termination (and subject to payment of amounts due for properly performed services), the District may use the design and other work product prepared for the Project, and may procure construction of the Project through a separate competitive procurement (including competitive sealed bidding) using such design documents and work product, without further obligation to the terminated Design-Builder.

The Design-Builder will pre-qualify Subcontractors, including any work proposed to be self-performed, and “buy-out” (bid) all labor and materials to provide a complete project.

To maintain the project’s aggressive schedule, Valleywise Health may require that construction be accomplished in a “fast-track” manner, utilizing multiple GMP packages, and/or a phased Construction and phased Occupancy approach. The scope of each package, the extent of the overlap between design and construction, and the timing of the preparation of the GMPs, will be mutually agreed between Valleywise Health and the Design-Builder.

The Requirements of Respondent include A/E Basic Services, Preconstruction, Construction Services inclusive BIM Modeling, Constructability Assessments, Mockups, Budgets, Schedules, and Project Delivery within a Guaranteed Maximum Price (GMP). Additional Services must include Geotechnical engineering, Civil, landscape, traffic, and parking design.

The following Services for the project will be contracted separately by Valleywise Health:

- A. 3rd Party Inspections as required
- B. Materials Testing
- C. Commissioning Agent (if applicable)
- D. Test & Balance Agent (if applicable)
- E. 3rd Party Cost Estimator
- F. Wayfinding
- G. A portion of Low Voltage, Access Control and Security scope of work

The Design/Build with Guaranteed Maximum Price contract centers on utilization of a Design/Build Contractor who assembles and leads the Design/Build Team consisting of the Design/Build Contractor, the Architect/Engineer, other consultants as required including, but not necessarily limited to, Mechanical, Electrical, Plumbing, Structural, Civil/Engineers, Technology, Security/Low Voltage (as required), construction trade contractors (all under contract to or under the Design/Build Contractor) as well as Valleywise Health representatives.

Project Requirements:

In full compliance with the Contract, the Design-Builder will be required to work with Valleywise Health's Personnel on the Project as required under the Contract, including without limitation, for the following:

- Define project goals, scope, budget, and quality standards. Further define and confirm owner's program.
- Review existing site conditions, and local codes to develop initial site usage plans and building systems that maximize cost-effectiveness.
- Work effectively with Valleywise Health's Personnel to develop plans, schedules, costs and other relevant items during all phases of the project.
- Provide continuous monitoring of budget to avoid cost overruns through all phases of design.
- Complete and turn in all required close out documents, and as-built drawings.
- Coordinate their activities with Valleywise Health's Personnel and any third party contracts or contractors that Valleywise Health may provide for this project.

The Design-Builder will be required to utilize the owner's project management information software (PMIS) system for all project correspondence such as document control, budget reporting, issue tracking, daily and weekly field reports, observation reports, invoices and pay applications, proposed changes, RFIs, submittals and close out documentation.

Pre-Construction Services: The Design-Builder will provide all of the Pre-Construction Services required by the owner under the Contract, including, without limitation, the following services:

- Complete project design reviews at all phases with Valleywise Health's Personnel.
- Assume full budgetary responsibility in establishing the Guaranteed Maximum Price for the Project.
- Provide a constructability review of the project construction documents.
- Develop the project construction schedule.
- Conduct long-lead-time procurement studies and possible initiation of procurement of long-lead-time items.
- Coordinate all materials supply and installation schedules with Valleywise Health's Personnel, and utility entities if and as necessary.
- Assist Valleywise Health with provisions for any phasing of the project.
- Identification of project conflict, sequencing, scheduling and/or coordination issues, between systems, designs, trades, space, material availability, Valleywise Health stakeholders and other items.

Management of Construction: The Design-Builder will be responsible for the management of construction for the Project. The services required for the construction program may be but are not limited to the following:

- Enter contracts with all subcontractors, material suppliers and equipment suppliers necessary for the construction of said facility.

- Schedule and conduct construction meetings.
- Provide continuous on-site management services throughout the construction phase. The management shall include, but is not limited to:
 1. Weekly job site meetings and minutes.
 2. Coordination with various Valleywise Health departments and other necessary agencies (e.g., utility companies, etc.)
 3. Maintain daily on-site project logs and schedule reports.
 4. Ensure project compliance with all applicable federal, state, county and local permitting requirements.
 5. Monitor subcontractor work performance for workmanship quality and deficiencies.
 6. Ensure that all applicable bond & insurance requirements are fulfilled.
 7. Conduct bid process, award, and management of all construction related contracts and subcontracts in accordance with Valleywise Health bid requirements.
 8. Oversee construction management staff and subcontractor safety programs.
 9. Maintain master sets of construction documents through the owner's PMIS system to include all ASI, RFIs, and supplemental sketches and provide copies to all subcontractors concerned.
 10. Maintain cost controls for the project.
 11. Implement and maintain quality control measures for the project.
 12. Coordinate as much of the procurement of materials and equipment through the Valleywise Health GPO as Valleywise Health may determine to be reasonable.
 13. Manage the submittal and materials delivery process.
 14. Provide and maintain continuous construction site traffic controls and signage.
 15. Ensure that a code of conduct, typical for municipal construction projects, is strictly enforced with all Design-Build staff and subcontractors for the project.
- Develop, update and maintain a detailed construction schedule that includes a Substantial Completion date and submittal schedules.
- Process payment requests for approval.
- Coordinate special consultants and testing lab services contracted by owner as required.
- Administer post-construction closeout and warranty collection, start-up and transition to operation.

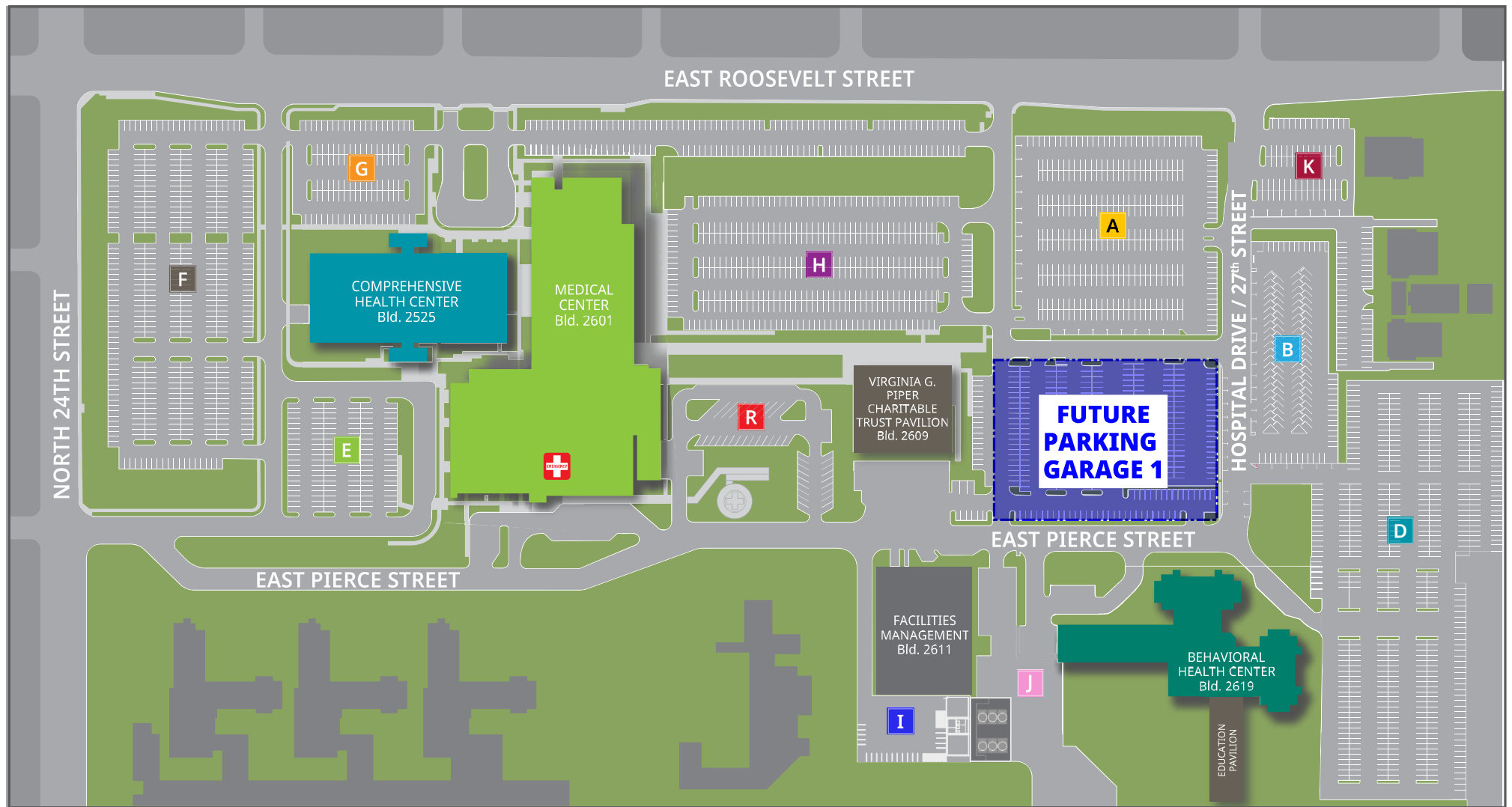
Responsibility:

It is Valleywise Health's desire to find the right Design-Builder who is comfortable working with the Valleywise Health Team. Notwithstanding the critical importance of this team

approach, the Design-Builder will ultimately be responsible for the adequacy, accuracy, completeness, constructability, and coordination of the Design Documents and the Work. Demonstration of past performance is critical to the selection of the Design-Builder.

Safety:

This Project is located within an active healthcare campus. Construction means and methods must prioritize life safety, emergency access, patient and staff circulation, noise and vibration control, and continuity of operation.



CAMPUS MAP

(Published 06 24 2026)



**EXHIBIT B
TO
REQUEST FOR QUALIFICATIONS FOR THE
VALLEYWISE HEALTH ROOSEVELT CAMPUS PARKING GARAGE 1
DESIGN-BUILD SERVICES**

[Past Performance Verification Form (PPVF) and Evaluation]

See following pages.

PAST PERFORMANCE VERIFICATION FORM (PPVF)

Directions: Request Public/Private Agencies, for which you have **substantially completed similar work** (Professional Services, CM@R or Design-Build projects), to complete a copy of the PPVF for three (3) similar projects. Provide this form to the Owner or Owner's representative **directly responsible** for oversight of the project to complete and submit to the District email by the date and time listed below. If the form is received after the date and time specified, it will not be accepted. If your firm has completed previous similar work for the District, it is recommended that you utilize this experience. If your firm has not completed prior projects with the District, you will not be penalized.

SOQ Due Date and Time: Tuesday, July 28, 2026; 2:00 p.m. (local Arizona time)

PROJECT NAME & VALUE: _____

PROJECT ROLE SUBMITTING FOR: (select one). ☐ PROFESSIONAL. ☐ CM@R. ☐ DB

NAME OF COMPANY TO BE EVALUATED: _____

NAME OF AGENCY OR FIRM SUBMITTING EVALUATION: _____

NAME/PHONE NUMBER OF PERSON SUBMITTING EVALUATION: _____

DATE PROJECT WAS SUBSTANTIALLY COMPLETED: _____

QUESTIONS:

1. Has the above referenced project reached substantial completion? (select one). ☐ Yes ☐ No

2. What project delivery method was utilized? (select one) ☐ Design-Bid-Build ☐ CM@R ☐ DB

What type of services did this firm provide on the referenced project? _____

3. On a scale of 1 to 10 (1 being lowest, 10 highest), rate this company's performance on the following:

- | | | |
|----|---|-------|
| a. | How would you rate work performed by this firm on your project? | _____ |
| b. | Was the project completed on time? | _____ |
| c. | Was the project completed within budget? | _____ |
| d. | What was the quality of the work performed? | _____ |
| e. | Was staff proactive in solving problems that may have occurred on your project? | _____ |
| f. | What was the extent of staff turnover? (10 = low turnover, 1 = high turnover) | _____ |
| g. | Would you be willing to contract with this firm again? (10 = Yes, 1 = No) | _____ |

4. If the referenced project was over budget, please explain: _____

5. Any additional comments. _____

Please email to (donna.benavidez@valleywisehealth.org) by the date and time shown above.

EXHIBIT B-1

PAST PERFORMANCE VERIFICATION EVALUATION SUBMITTALS

LIST OF THOSE AGENCIES OR FIRMS WHO WILL BE SUBMITTING EVALUATIONS TO THE DISTRICT

Please list the agency or firm name, address, phone number and contact information for the firms that will be providing the Past Performance Verification Form. It is the **responsibility of the Design-Build Firm** to ensure that the District receives all of the Past Performance Verification Forms prior to the SOQ submittal deadline. Failure to provide evaluations by date and time specified will result in zero points for that specific evaluation.

(NOTE: Only agencies or firms listed as 1, 2, or 3 will be accepted. Do not add lines to this form.)

1. Firm Name: _____
Address: _____

Contact Name: _____
Contact Phone and Email: _____

2. Firm Name: _____
Address: _____

Contact Name: _____
Contact Phone and Email: _____

3. Firm Name: _____
Address: _____

Contact Name: _____
Contact Phone and Email: _____

**EXHIBIT C
TO
REQUEST FOR QUALIFICATIONS FOR THE
VALLEYWISE HEALTH ROOSEVELT CAMPUS PARKING GARAGE 1
DESIGN-BUILD SERVICES**

[Design-Build Agreement]
See following pages.

**DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH
AND**

THIS DESIGN-BUILD AGREEMENT (the “Agreement”) is made and effective this ____ day of _____, 2026, by and between the Maricopa County Special Health Care District d/b/a Valleywise Health, a political subdivision of the State of Arizona (“District”), and _____, a _____ (“Design-Builder”), for complete design and construction services related Roosevelt Campus Parking Garage 1 project, located at _____, and other related items as deemed necessary by the District (the “Project”). The District and the Design-Builder may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

**ARTICLE 1
GENERAL**

1.1 Project Summary. The Design-Builder shall perform all pre-construction services set forth in Article 2 below (the “Pre-Construction Services”) and, subject to Section 1.2 below, management and construction services set forth in Article 4 below (the “Construction Services”) (the Pre-Construction Services and the Construction Services are collectively referred to as the “Services”), including providing all material, equipment, tools and labor necessary to complete the Work (as defined below) described herein and reasonably inferable from the Contract Documents (as defined below), including the upgrades and improvements to be encompassed in the Project. The Design-Builder will also take the necessary steps to ensure that the Project design is constructible within the established budget.

1.2 Phased Agreement. The Services contemplated by this Agreement shall be carried out in several distinct phases. The initial Services shall be to provide Pre-Construction Services including (A) such environmental investigation services as applicable pursuant to Section 2.1 below, (B) creating all design documents including the Construction Documents pursuant to Section 2.2 below and (C) the Pre-Construction Phase General Services, pursuant to Section 2.3 below (the “Pre-Construction Phase General Services”). The Design-Builder shall be compensated on an hourly basis, at the agreed-upon hourly rates, for the Pre-Construction Services as set forth in below, provided that such services may extend through the construction phase for various components of the Project. At the point in the Pre-Construction Services as determined by the District, the District may, in its sole discretion, request that the Design-Builder submit a proposal for a guaranteed maximum price (“GMP”) for construction of the Project, which may be submitted as a single GMP or as multiple GMPs at the District’s sole discretion. The Design-Builder shall prepare and submit the GMP Proposals pursuant to Article 3 below. If the District and the Design-Builder agree upon the respective GMP Proposals, the Design-Builder shall furnish, with respect to each GMP Proposal (A) such environmental investigation services as applicable pursuant to Section 2.1 below and (B) the Construction Services set forth in Article 4 below. If the District and the Design-Builder cannot, after good faith efforts, agree on the GMP, the District may, in its sole discretion, terminate this Agreement (subject to the terms and conditions set forth in Section 12.2 below).

1.3 Definitions.

A. “Additional Services” means services not initially included as part of the Work, but which are later identified as necessary or desirable by the District, as more fully described in Section 4.17 below.

B. “Applicable Law” means any law, rule, code, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by, any governmental body having jurisdiction, applicable or relating to the design, permitting, construction, equipping, financing, ownership, possession, or any other transaction or matter contemplated hereby relating to the design and construction of the Project.

C. “Change Directive” means a written order prepared and signed by the District and the Design-

Builder, approving a change in the Work that does not require an adjustment in the total Contract Price or the Contract Time.

D. "Change Order" means a contract amendment issued after execution of this Agreement or future GMP Amendments signed by the District, Design-Builder and other parties, as may be required or appropriate, agreeing to an addition, deletion or revision in the scope of Work, an adjustment to the total Contract Price, an adjustment to the Contract Time or other modifications to Contract terms.

E. "Construction Documents" means the plans, Specifications and drawings prepared by the Design-Builder after correcting for permit review requirements, and as approved by the District or authorized designee. The Construction Documents, once approved by the District as 100% complete, shall be attached hereto as Exhibit A and incorporated herein by reference.

F. "Construction Fee" means the portion of Design-Builder's compensation not related to Direct Construction Costs, as set forth in Article 3 below.

G. "Contractor's Contingency" means a sum included in the Contract Price intended to cover costs incurred by the Contractor for unforeseen events, conditions, or minor changes in the Work that are not the result of errors, omissions, or negligence by the Contractor, and which are not otherwise covered by other allowances or contingencies in this Agreement. The Contractor's Contingency shall be used only with the prior written approval of the Owner and in accordance with the procedures set forth in this Agreement.

H. "Contract Documents" means all of the following:

1. Change Orders and written amendments to this Agreement, including the amendments, if any, relating to the respective GMPs (the "GMP Amendments"), signed by both the District and the Design-Builder, attached hereto as Exhibit B and incorporated herein by reference.
2. This Agreement.
3. The Construction Documents.
4. The Design-Builder's Guaranteed Maximum Price Proposals (the "GMP Proposals"), attached hereto as Exhibit C and incorporated herein by reference, including but not limited to:
 - i. The Design-Builder's proposed scope of services and fee breakdown for each GMP Proposal (the "Scope").
 - ii. The Master Schedule relating to the applicable Scope developed in accordance with Subsection 2.3(C) below and updated as set forth in this Agreement, attached hereto as Exhibit D and incorporated herein by reference.
5. The District's Request for Qualifications (the "RFQ") attached hereto as Exhibit E and incorporated herein by reference.
6. The Design-Builder's response to the District's RFQ attached hereto as Exhibit F and incorporated herein by reference.
7. In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

I. "Contract Price" means the total compensation to be paid to the Design-Builder, as more fully described in Article 7 below.

J. "Contract Time" means the Days, as set forth in Article 6, indicating the period of time, including authorized adjustments, allotted in the Contract Documents to achieve Substantial Completion of the Work.

- K. “Cost Model” means the detailed cost information for the Project as described in Section 2 below.
- L. “Cost of the Work” means the portion of Direct Construction Costs necessarily incurred by the Design-Builder in the proper performance of the Work.
- M. “Critical Path” means the sequence of activities from the start of the Work to Substantial Completion of the Project for which any delay in the completion of these activities will delay achieving Substantial Completion.
- N. “Day(s)” means calendar day(s) unless otherwise specifically noted in the Contract Documents.
- O. “Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized in the area of the Site as inherent in the Work.
- P. “Direct Construction Costs” means General Conditions Costs and Cost of the Work as set forth in Article 3 below.
- Q. “Environmental Conditions” means collectively, Hazardous Materials and Underground Storage Tanks.
- R. “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney’s fees, that are incurred at any time as a result of the existence of Environmental Conditions upon, about or beneath the Project Site or migrating or threatening to migrate to or from the Site, and including, without limitation:
1. Damages for personal injury, or injury to property or to natural resources occurring upon or off the Site.
 2. Fees incurred for the services of attorneys, consultants, the Design-Builder, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Environmental Conditions or violation of Environmental Requirements.
 3. Liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in Subsections (1) and (2) above.
- S. “Environmental Requirements” means all applicable laws, statutes, regulations, rules, ordinances, common law codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the United States, the State of Arizona, Maricopa County and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:
1. (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601, *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder; (b) defined as a “regulated substance” within the meaning of Subtitle I of the Resource Conservation and Recovery Act (“RCRA”) (42 U.S.C. § 6691 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), as amended from time to time, and the regulations promulgated thereunder, or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), as amended from time to time, and the regulations promulgated thereunder; (d) the Clean Air Act (42 U.S.C. § 7401 *et seq.*), as amended from time to time, and

regulations promulgated thereunder; (e) regulated under the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*); (f) Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*); (g) the Solid Waste Disposal Act (42 U.S.C. § 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; or (h) defined as “hazardous”, “toxic”, or otherwise regulated, under any Environmental Requirements adopted by the state in which the Site is located, or its agencies or political subdivisions.

2. Asbestos or asbestos-containing materials.

3. All requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

4. All requirements pertaining to the protection of the health and safety of employees or the public.

T. “Final Completion” means completion of the Project, including Punch List items, by the Design-Builder in accordance with the Contract Documents, certified to the District by the Design-Builder.

U. “Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

V. “General Conditions Costs” means a portion of the costs incurred by Design-Builder during the construction phase.

W. “Hazardous Materials” means any substance as defined under Environmental Requirements including:

1. The presence of which requires notification, investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

2. Which is or becomes defined as a “hazardous waste”, “hazardous substance”, pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto.

3. Which is petroleum, petroleum products, including crude oil or any fraction thereof not otherwise designated as a hazardous substance under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; and, ethanol, methyl tertiary butyl ether or derivatives or constituents of or vapors from any of the foregoing.

4. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or the State of Arizona.

5. The presence of which on the Site causes or threatens to cause a nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site.

6. The presence of which on adjacent properties could constitute a trespass by the Design-Builder or the District.

X. “Master Schedule” is defined as set forth in subsection 2.3(C) below.

Y. “Project Designers” is defined as Architecture, landscape and engineering services that are procured from licensed, independent design professionals retained by the Design-Builder or (ii) furnished by licensed

employees of the Design-Builder where such services shall be provided as required or as permitted by the laws of the state of Arizona.

Z. "Project Record Document(s)" means the document(s) created pursuant to Section 4.12.

AA. "Punch List" means that list of items provided by the District to the Design-Builder at the time of Substantial Completion indicating items to be completed or corrected, including the time for completion or correction by the Design-Builder after Substantial Completion.

BB. "Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

AB. "Site" means the land or premises on which the Project is located.

AC. "Specifications" means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

AD. "Subcontractor" means a person or entity employed or engaged by the Design-Builder or any person or entity directly or indirectly in privity with the Design-Builder to perform any portion of the Work. The term Subcontractor does not include any separate contractor employed by the District.

AE. "Substantial Completion" means construction has been completed in accordance with the Contract Documents to the extent that the District can use or occupy the entire Project, or the designated portion of the Project, for the use intended without any outstanding, concurrent construction at the Site, except as may be required to complete or correct Punch List items.

AF. "Underground Storage Tank" shall have the definition assigned to that term by § 9001 of RCRA, 42 U.S.C. § 6991, as amended, and also shall include: (1) any tank of 1,100 gallons or less capacity used for storing motor fuel; (2) any tank used for storing heating oil for consumption on the premises where stored; (3) any tank used for storing waste oil; (4) any septic tank; and (5) any pipes with oil dispensers connected to items listed in clauses 1.3(AA)(1) and 1.3(AA)(2) above.

AG. The "Work" means, collectively, the (1) environmental investigation set forth in Section 2.1 below, (2) Creating all design documents, including the Construction Documents and design remedies set forth in Section 2.2 below, (3) Pre-construction Phase General Services set forth in Section 2.3 below, (4) Construction Services provided in accordance with Article 4 below, if applicable, (5) Additional Services that may be provided pursuant to an approved Change Directive or Change Order in accordance with Article 8 below and (6) other services that are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

1.4 Cooperative Relationship. The District and the Design-Builder agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, but without sacrificing quality. The District and the Design-Builder agree to consider design modifications and alternative materials or equipment if necessary to permit the Project to be constructed by the dates of Substantial Completion and Final Completion, as established by the mutually-agreed-upon Master Schedule attached hereto.

1.5 District Representations.

A. District's Project Manager. District has designated a District staff member to act as District's Project Manager. None of the activities of District's Project Manager supplant or conflict with the design, budget, or any other services and responsibilities furnished by the Design-Builder. All instructions by the District relating to this Agreement will be issued or made through the District's Project Manager. All

communications and submittals of Design-Builder to the District shall be issued or made through the District's Project Manager unless the District or the District's Project Manager shall otherwise direct. Throughout the term of this Agreement the District's Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design-Builder and to call periodic conferences to be attended by the Design-Builder and the Design-Builder's Subcontractors.

B. Limited Project Management. None of the District's project management activities are intended to supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Design-Builder or its Subcontractors, except as otherwise specifically modified by this Agreement.

C. No Third-Party Relationships. The Design-Builder assumes responsibility to District 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 District and any level of Subcontractor, including but not limited to any third-party beneficiary rights. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the District or the Design-Builder.

D. Requests for Information. The District shall examine requests for information/direction submitted by the Design-Builder and shall render decisions thereto promptly. The District shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work (1) in cooperation with the Design-Builder, (2) consistent with this Agreement and (3) in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the District.

E. Notice to Design-Builder of Defect. If the District observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the District shall give written notice thereof to the Design-Builder.

F. Approvals. The District shall secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the Project.

G. Communication. The District, its representatives and consultants shall communicate with the Subcontractors only through the Design-Builder unless otherwise directed or permitted by the Design-Builder.

H. Notices. The District shall send to the Design-Builder copies of all notices and communications sent to or received by the District relating to the Design-Builder's Services with respect to the Project.

1.6 Design-Builder Representations.

A. Standards. The Design-Builder shall provide the design, professional management and construction services for the Project in accordance with the terms and conditions of this Agreement. The Design-Builder covenants with the District to furnish its skill and judgment with due care, in accordance with the highest standards of its profession considering the skill and care of qualified design-build entities performing comparable work on similar projects. All Applicable Laws in effect on the date of this Agreement or as subsequently amended shall be strictly adhered to by Design-Builder and Design-Builder hereby agrees that coordination between disciplines (including architectural, structural, civil, and parking systems) is the Design-Builder's responsibility.

B. Key Personnel. The Design-Builder shall provide to the District a list of the proposed key project personnel of the Design-Builder and its Subcontractors to be assigned to the Project. This list shall include such information as the professional background of each of the assigned individuals as may be requested by the District. Such key personnel and consultants shall be satisfactory to the District and shall not be changed except with the consent of the District. The Design-Builder will maintain an adequate number of competent and qualified persons, as determined by the District, to ensure acceptable and timely completion of the Services described in this Agreement. If the District objects, with reasonable cause, to any of the Design-

Builder's staff, the Design-Builder will take prompt corrective action acceptable to the District and, if required, remove such personnel from the Project and replace with new personnel with qualifications acceptable to the District. Additionally, the District shall have the right to request that the Design-Builder personnel be removed from the Project if, in the District's sole discretion, such personnel are detrimental to the Project delivery process. Upon receipt of such request, the Design-Builder shall remove such personnel unless the Design-Builder can provide the District with sufficient documentation to prove it is commercially impractical to replace the personnel with similarly qualified personnel. The District's approval of substituted personnel shall not be unreasonably withheld.

C. Project Designers. Architecture, landscape and engineering services shall be (i) procured from licensed, independent design professionals retained by the Design-Builder or (ii) furnished by licensed employees of the Design-Builder and such services shall be provided as required or as permitted by the laws of the state of Arizona. The persons or entities providing architecture, landscape and engineering services shall be referred to as the "Project Designers." If the Project Designers are independent design professionals, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Project Designers.

Design-Builder agrees that its Design Professionals (including Subcontractors) are fully qualified by education, technical training, and experience as professionals, to perform Professional Services and Contract Administration. Design-Builder will also cause all Subcontractors and/or consultants it employs, or contracts with, to meet the same Standard of Care as Design-Builder as provided above in Section 1.6(A).

The District's acceptance of the Design Documents provided by Design-Builder, and Design-Builder's estimates of probable construction cost, shall not relieve Design-Builder from any responsibility for errors or omissions in those regards, nor from any other obligation of Design-Builder under the Design-Builder Agreement or applicable laws, statutes, ordinances, building codes, rules and regulations, or operation of law. Design-Builder acknowledges and agrees that approval and involvement by the District during the Design Phase (including, without limitation, recommendations by the District as to the Design), in no way relieves Design-Builder of full responsibility for the Design and the Design Documents.

All drawings and specifications shall bear the signature and professional seal for all disciplines.

Design-Builder hereby agrees, subject to the Standard of Care, that it shall have the same legal responsibility to the District as the District has, or may have, to others arising out of, or resulting from, any errors or omissions of Design-Builder.

D. Subcontractor Selection Program. The Design-Builder shall procure all Subcontractors in accordance with the written subcontractor selection procedures submitted with the Design-Builder's response to the District's RFQ pursuant to A.R.S. § 34-601 et seq., as amended (the "Subcontractor Selection Program"), attached hereto as Exhibit G and incorporated herein by this reference.

The Design-Builder shall use commercially reasonable efforts to solicit interest from qualified Subcontractors and suppliers, including minority business enterprises, woman business enterprises, and local contractors and suppliers. The Design-Builder shall coordinate all procurement activities, respond to bidder inquiries, and ensure that all selected Subcontractors maintain all licenses, permits, insurance, and bonds required by Applicable Law and the Contract Documents.

The Design-Builder shall be solely responsible for administration of the Subcontractor Selection Program and for compliance with all Applicable Laws governing subcontractor procurement and selection. Nothing in this Agreement, including District review, observation, attendance at bid openings, approval, or non-objection, shall relieve the Design-Builder of such responsibility or create any liability or responsibility on the part of the District for subcontractor procurement, selection, qualification, pricing, or performance.

Selection of Subcontractors shall be based on qualifications alone or on a combination of qualifications and price, but shall not be based solely on price. The Design-Builder shall conduct all bid solicitations, receive and open bids or proposals, prepare bid analyses, conduct pre-award evaluations, and make subcontract award

recommendations in accordance with the Subcontractor Selection Program.

The District shall be entitled to receive reasonable advance notice of bid openings and may attend such openings through its representatives. If the Design-Builder proposes to award a subcontract to an entity other than the lowest responsive price proposal, the Design-Builder shall provide written justification supporting the proposed selection. Any such award shall remain subject to District approval, provided that no resulting adjustment shall increase the GMP or Contract Price.

All construction Subcontractors not identified as members of the Design-Build Team in the RFQ submittals shall be subject to District review and approval prior to award of the applicable subcontract.

Except as otherwise approved by the District in writing, the Design-Builder shall not replace any previously approved Subcontractor. Any costs arising from substitution of a Subcontractor shall be borne solely by the Design-Builder and shall not increase the GMP or Contract Price.

Within thirty (30) calendar days after execution of a subcontract, the Design-Builder shall provide the District with a copy of the executed subcontract together with any special or supplementary conditions applicable thereto.

The Design-Builder shall identify, prior to commencement of Construction Phase services, any portion of the Work the Design-Builder seeks to self-perform and shall obtain the District's prior written approval before self-performing any such Work.

Any approved self-performed Work shall be competitively priced in a manner substantially consistent with the procurement procedures applicable to other Subcontractors. The Design-Builder's pricing submission for self-performed Work shall include labor rates and confirmation that sub-subcontracted trades and material suppliers will be competitively solicited from not fewer than three qualified bidders where reasonably available. Overtime for self-performed Work shall require the District's prior written approval.

The District reserves the right to retain an independent consultant to review subcontractor procurement procedures, pricing, or cost proposals including self performed Work associated with the Project, and the Design-Builder shall reasonably cooperate with any such review.

The Design-Builder shall defend, indemnify, and hold harmless the District and its officers, officials, agents, and employees from and against claims, damages, losses, liabilities, and expenses, including reasonable attorneys' fees and costs, arising out of or relating to the Design-Builder's failure to comply with the Subcontractor Selection Program or Applicable Law in procuring or selecting Subcontractors.

E. Site Conditions. The Design-Builder represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work related to the Project, and that it has investigated and satisfied itself as to the general and local conditions and constraints that are applicable to the Work such as (1) conditions bearing on transportation, disposal, handling and storage of materials, (2) the availability of labor, water, power and roads, (3) normal weather conditions, (4) observable physical conditions at the Site, (5) the surface conditions of the ground and (6) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Design-Builder encounters subsurface or concealed conditions that differ materially from those which could reasonably have been determined from a Site surface investigation by the Design-Builder on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then the Design-Builder shall give notice to the District promptly before conditions are disturbed and in no event later than seven Days after the first observance of the conditions if a Change Order is contemplated by the Design-Builder due to such conditions. Such materially different conditions, if discovered after a GMP is approved, may entitle the Design-Builder to an equitable adjustment in the applicable GMP or schedule pursuant to the Change Order provisions set forth in Article 8 below.

1.7 District and Subcontractors. The District will require the Design-Builder to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued

consistent with (A) the applicable provisions of this Agreement and (B) Applicable Law, including, but not limited to, the requirements of A.R.S. § 34-603 relating to inclusion of the Project's physical location in all subcontracts.

1.8 Data Confidentiality.

A. Data Defined. As used in this Agreement, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Design-Builder in the performance of this Agreement.

B. Confidentiality. The Parties agree, subject to Arizona public records law, that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Design-Builder in connection with the Design-Builder's performance of this Agreement is confidential and proprietary information belonging to the District.

C. Use of Data. The Design-Builder will not divulge data to any third party without prior, written consent of the District. The Design-Builder will not use the data for any purposes except to perform the Services required under this Agreement. These prohibitions will not apply to any of the following data, provided the Design-Builder has first given the required notice to the District:

1. Data that was known to the Design-Builder prior to its performance under this Agreement, unless such data was acquired in connection with work performed for the District.
2. Data that was acquired by the Design-Builder in its performance under this Agreement, and which was disclosed to the Design-Builder by a third party, who to the best of the Design-Builder's knowledge and belief, had the legal right to make such disclosure and the Design-Builder is not otherwise required to hold such data in confidence.
3. Data that is required to be disclosed by the Design-Builder by virtue of law, regulation, or court order.

D. Disclosure Notice. In the event the Design-Builder is required or requested to disclose data to a third party, or any other information to which the Design-Builder became privy as a result of any other contract with the District, the Design-Builder will first notify the District as set forth in this section of the request or demand for the data. The Design-Builder will timely give the District sufficient facts, such that the District can have a meaningful opportunity to either first give its consent or take such action that the District may deem appropriate to protect such data or other information from disclosure.

E. Return After Completion. The Design-Builder, unless prohibited by law, within 10 Days after completion of services for a third party on real or personal property owned or leased by the District, will promptly deliver, as set forth in this Section, a copy of all data to the District. All data will continue to be subject to the confidentiality requirements of this Agreement.

F. Design-Builder Responsible. The Design-Builder assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the District if any of the provisions of this Section are violated by the Design-Builder, its employees, agents or Subcontractors. For the purposes of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court.

1.9 Changes in Scope and/or Schedule.

A. The District at any time, by written notice to Design-Builder, may make changes within the general scope of this Design-Build Agreement including, without limitation, to any one or more of the following:

1. Scope of Design, Pre-Construction, and/or Construction Phase Services,

including but not limited to required drawings, designs, or specifications

2. Schedule of Milestones

3. Time for Completion

B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Design-Build Agreement, whether or not identified in the notice, the District may negotiate with the Design-Builder to make equitable adjustments to Design-Builder's Fee or Guaranteed Maximum Price, the Milestone Schedule, or the Time for Completion, or shall otherwise modify the Design-Build Agreement as appropriate.

For Construction Services, Design-Builder must assert its right to an equitable adjustment under this clause within thirty (30) days from the date of receipt of the written notice from the District.

The District may, in its sole and absolute discretion, consider and/or deny requests for equitable adjustment that are made more than thirty (30) days from receipt of the written notice, but in any event before final payment under Design-Builder Agreement.

C. Any changes must be authorized by District in writing before they are performed.

1.10 Ownership of Documents.

A. All Design Documents, including but not limited to plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by Design-Builder (hereinafter referred to as "Work Product"), both physical and digital, shall be the property of the District, including the right to use same on District's other projects without additional cost to the District. Design-Builder shall maintain for its file copies of those documents, drawings and/or other products required by law or the standards of professional practices.

B. In the case of reuse or modification of the Design Documents by the District, Design-Builder's name and all professional seals shall be removed, and Design-Builder shall not be liable to the District or third parties in their reuse.

C. By execution of this Design-Build Agreement, Design-Builder transfers and hereby assigns all copyright and other intellectual property interest in the Construction Documents and the completed Project to the District, and further agrees to execute any separate assignment agreement necessary to implement such transfer. Design-Builder may use on other projects any standard details and other parts of the Construction Documents not prepared exclusively for District.

D. If the District terminates the Project for its convenience as set forth in Article 12 of the Agreement or Design-Builder elects to terminate this Agreement in accordance with Article 12, it is understood that the use of the Work Product is at District's sole risk without liability to Design-Builder or anyone working by or through Design-Builder, including Design Professionals or Consultants of any type.

ARTICLE 2 PRE-CONSTRUCTION SERVICES

2.1 Environmental Investigation.

A. Discovery. Upon written notice from the District or upon the Design-Builder's discovery of Environmental Conditions on the Site, the Design-Builder shall recommend, for execution by the District, one or more contracts ("Environmental Contracts") with suitably qualified consultants and/or engineers ("Environmental Engineers"), each of which Environmental Engineer and which form of Environmental Contract shall be subject to the approval of the District, for purposes of performing an investigation and

analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the Site. The Environmental Contracts shall provide for a commercially reasonable scope of investigation and costs approved by the District and may provide for conducting the investigation and testing in phases acceptable to the District. The Environmental Contracts shall also provide that the Environmental Engineers shall begin their tests and inspections at the Site as soon as the District is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that the Design-Builder, acting as agent of the District, shall coordinate the activities of the Environmental Engineers with the Work.

B. Assessment; Remediation Analysis. The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans in accordance with applicable local, state, and federal rules, regulations, and laws, including the federal "all appropriate inquiry" Standard and American Society for Testing and Materials, ASTM E1527-13 ("Environmental Assessments") as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments shall contain a detailed analysis of the Environmental Conditions discovered, and the actions ("Remedial Actions") required for the response, removal, cleanup or remediation of such Environmental Conditions (1) that are required by Environmental Requirements, or (2) that are reasonably necessary to mitigate Environmental Damages.

C. Impact on Master Schedule. The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide the District and the Design-Builder with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts. The Design-Builder shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to the District a written report setting forth the Design-Builder's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Master Schedule and the progress of the Work.

D. Notice; Permitting. The Environmental Contracts shall require the Environmental Engineers to (1) give notice to the District of the presence of Environmental Conditions, (2) only upon the written consent of the District, give any necessary notice to the federal government and the State of Arizona or other agencies of the presence of any Environmental Conditions, (3) assist the District in negotiations with Federal and Arizona agencies concerning preparation and approval of a plan for clean-up to the extent required and (4) obtain all necessary permits to perform any Remedial Actions.

E. Remediation Contractors. If so instructed by the District, based upon the results of the Environmental Assessments, the Design-Builder shall assist the District with obtaining bids from remediation contractors ("Remediation Contractors") suitably qualified and approved by the District to perform the Remedial Actions selected by the District. If the District elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, the District will so advise the Design-Builder in a written notice on or before the date that is 60 Days after receipt of the foregoing matters from the Design-Builder. Thereafter, the District shall execute contracts with the selected Remediation Contractors ("Remediation Contracts").

F. Coordination. Unless otherwise instructed, the Design-Builder, as agent for the District, shall be responsible for coordinating the work and services performed by the Remediation Contractors with the Work.

G. Payment for Remediation. The District will make all payments due under the Environmental Contracts and the Remediation Contracts directly to the Environmental Engineers and the Remediation Design-Builders. Such payments will be based on requisitions, which requisitions shall be approved by the Design-Builder prior to submission to the District. All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the applicable GMP, and shall be the sole responsibility of the District, except as expressly provided otherwise.

H. Additional Discovery. If, in the course of performance of the Work, the Design-Builder encounters on the Site any Environmental Conditions not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, the Design-Builder shall immediately suspend the Work in the

area affected and promptly thereafter report the condition to the District.

I. Design-Builder Responsibility. Except as set forth in Subsection 2.1(L) below, it is understood and agreed that with respect to any Environmental Conditions existing on the Site, the Design-Builder is not, and shall not be deemed to be, a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that the Design-Builder shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

J. District Indemnity. To the extent that the Design-Builder or the Subcontractors are not in violation of Subsection 2.1(L) below and to the extent sufficient appropriations are made pursuant to Section 14.22 below, the District shall indemnify, defend and hold harmless the Design-Builder, the Subcontractors, and the directors, officers, agents and employees of each (the "Contractor Indemnitees"), for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any of the Design-Builder Indemnities being deemed or determined to be a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

K. Delay for Remedial Actions. The District acknowledges and agrees that the Design-Builder shall not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation Contractor and any required approvals of any applicable government agencies. The Design-Builder agrees to use good faith efforts to adjust and reschedule its activities at the Site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

L. Hazardous Materials Prohibited. The Design-Builder shall not bring Hazardous Materials to the Site and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Design-Builder shall comply, and shall cause the Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

M. Design-Builder Indemnity. The Design-Builder shall indemnify, defend and hold harmless the District, its agents, representatives, officers and employees for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Design-Builder or the Subcontractors of any Environmental Requirements arising out of Subsection 2.1(L) above.

2.2 Construction Documents; Design Remedies.

A. Program Evaluation. The Design-Builder will provide to the District a written evaluation of the District's proposed Project and Project budget, with recommendations as to the appropriateness of each, and an analysis as to how each contribute to successfully achieving the District's goal for the Project.

B. Project Design Standards.

1. The Design-Builder will provide, through the Project Designers, engineering and other design professional services for the preparation of the required drawings, specifications and other design submittals to permit the Design-Builder to complete the Work. The Design-Builder's design professionals shall seal with an Arizona registered professional seal all Contract Documents prepared by them for this Agreement.

2. The Design-Builder shall provide a schedule of the design activities within seven days after the Notice to Proceed. The schedule shall provide 15 business days to be used by the District or its designee for reviews and approvals for any interim design submissions.

3. Design activities shall commence immediately after the Design-Builder has provided the

schedule of design activities. The Design-Builder shall monitor design efforts to ensure they are in accordance with the Master Schedule and shall provide adequate time for the District's review and permitting processes along with construction activities.

4. The Design-Builder shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for this Project and shall correct, at its expense, all willful or negligent errors and omissions that are discovered. Correction of willful or negligent errors and omissions relating to engineering plans and specifications shall be the responsibility of the Design-Builder. The cost of the design necessary to correct those errors attributable to the Design-Builder or anyone for whom the Design-Builder is responsible shall not be reimbursable costs to the Design-Builder. Any damage incurred by the District as a result of additional construction cost caused by negligent, reckless, or intentional wrongful conduct shall not be reimbursed to the Design-Builder to the extent that the negligent, reckless, or intentional wrongful conduct falls below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the District has accepted or approved the Design-Builder's product shall in no way relieve the Design-Builder of any of its responsibilities.

5. Within seven (7) days after a scheduled submission, the Design-Builder and the District will meet and confer about the submission, with the Design-Builder identifying during these meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents or previously submitted design submissions.

6. The Design-Builder shall submit electronically plans in a single bookmarked PDF format, and specifications in a single bookmarked PDF format, and one set of plans in a format compatible with the District's Computer Aided Drafting and Design (CADD) technology.

C. Design Submittals. The District shall review and approve the interim design submissions in a time that is consistent with the turnaround times stated in the Master Schedule. The Design-Builder shall not cause the design to proceed beyond interim design until the District approves the interim design submissions as provided in this Section. If the Design-Builder allows the design to proceed without District approval, the cost of any resultant redesign is not a reimbursable cost. The District's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither the District's review nor approval of any interim design submissions and Construction Documents shall be considered to transfer any design liability to the District nor relieve the Design-Builder of responsibility for any errors or omissions.

1. The Project design must meet all applicable (i) Maricopa Association of Government (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) the District's Supplements (latest revision) to the MAG Uniform Standard Technical Specifications, Details and Drawings; (iii) all District building standards, and shall include all special provisions provided by the District. Variances from the standards and guidelines must be identified in writing by the Design-Builder and approved by the District. Approval of variances or resolution of conflicts shall not be considered to transfer any design liability to the District.

2. The Design-Builder shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative of them unless specifically approved in writing by the District.

3. The Design-Builder shall coordinate with private, public and any other relevant utilities regarding standard utility issues and incorporate pertinent information in the plans.

4. The Design-Builder shall be responsible for scheduling, submitting, obtaining approval and retrieving all required Construction Documents from the various required reviewing agencies.

5. Following approval by the District of the interim design documents, Design-Builder shall refine the Construction Documents and submit same to the District for review at such intervals as the Parties determine. The Design-Builder shall submit to the District Construction Documents stating in detail drawings and specifications describing the requirements for construction.

a. The Construction Documents shall be consistent with the latest set of interim design submissions; as these submissions may have been modified in a design review meeting.

b. The Design-Builder shall provide the drawings in a format compatible with the District's CADD technology using District layering standards.

c. The drawing format shall be a 24" x 36" sheet size unless otherwise authorized in writing by the District.

d. The Parties shall have a design review meeting to discuss, and the District shall review and approve, the Construction Documents in accordance with the procedures stated in this Article.

e. Before commencement of construction, the Design-Builder shall submit to the District the following:

i. Construction Drawings in the required electronic format;

D. Design Document Review. The Design-Builder shall assist the District in reviewing the Construction Documents for clarity, consistency, constructability and coordination among the various contractors. The Design-Builder's first review of the Construction Documents shall occur not later than the 30% stage of the design by Project Designer for each component of the Project as designated by the District and shall be ongoing until 100% plans are final and complete for all phases of the Project. If the Design-Builder recognizes that portions of the Construction Documents are (1) in violation of Applicable Law or (2) in any way inadequate to achieve the intended result of the Project, the Design-Builder shall immediately notify the District in writing, describing the apparent violation or inadequacy.

1. The Design-Builder will periodically evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design, and other factors that may impact the Cost Model, GMP Proposals and/or the Master Schedule.

2. The Design-Builder will identify those additional surface and subsurface investigations that are required to provide the necessary information for the Design-Builder to construct the Project. After completion of pre-construction services, the Design-Builder may provide additional investigations to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents. The Design-Builder will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.

3. The Design-Builder will meet with the Project team as required to review designs during their development. The Design-Builder will thoroughly familiarize itself with the evolving documents through conceptual design, preliminary design, and development of the Construction Documents (detailed design). The Design-Builder will 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. The Design-Builder will also advise the Project team on proposed Site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Construction Documents. The Design-Builder will recommend cost effective alternatives.

C. Constructability and Bidability Reviews. The Design-Builder will conduct constructability and bidability reviews of the Construction Documents. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, and coordination of Work of Subcontractors and suppliers. The Design-Builder shall provide the District with a written report containing, at a minimum, (i) a summary of the research and analysis conducted, (ii) a detailed description of any constructability issues or challenges and (iii) recommendations for correcting any constructability issues or challenges.

1. Constructability Review. The Design-Builder will evaluate whether (a) the Construction Documents are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Construction Documents, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Construction Documents are practicable, and (g) 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.

2. Bidability Review. The Design-Builder will check cross-references and complementary Project drawings and sections within the Construction Documents and evaluate whether (a) the plans 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) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, (e) and the Project is likely to be subject to Differing Site Conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

3. Reports. The results of the reviews will be provided to the District in written reports clearly identifying all discovered discrepancies and inconsistencies in the Project, plans and Specifications with notations and recommendations made on the plans, Specifications and other Construction Documents. If requested by the District, the Design-Builder will meet with the District's Project Manager and Project Designers to discuss any findings and to review reports.

D. Notification of Variance or Deficiency. Design-Builder is responsible for assisting the Project Designers in ascertaining that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the Design-Builder recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the Project Designers and District in writing, describing the apparent variance or deficiency.

E. Value Analysis. The Design-Builder shall make recommendations to the District and the Project Designers with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work. Design-Builder shall evaluate all design options to provide value analysis services and cost savings recommendations to the District. The Design-Builder shall consider options most effective in first costs as well as long term operational costs and life cycle costs when evaluating each design option. The Design-Builder shall submit to the District and Project Designers (1) written cost studies, (2) cost-benefit evaluations of each cost studies, (3) a formal report to the design team, (4) a final written analysis study document and (5) a tracking report for the increases or decreases in Project cost due to value engineering or scope changes. The District will decide which alternatives will be incorporated into the Project. The Design-Builder will have full responsibility for the incorporation of the alternatives into the Contract Documents. The Design-Builder will include the cost of the alternatives into the Cost Model and any GMP Proposals.

F. Certification. At the completion of its review of the Construction Documents for each phase of the Project, the Design-Builder shall certify that the Construction Documents are sufficient and complete to build the respective portion of the Project within (1) the time available before the respective Substantial Completion date and (2) the Project budget. Nothing in this Subsection shall relieve the Project Designers of their respective responsibility for the Construction Documents.

2.3 Pre-Construction Phase General Services.

A. Personnel; Project Meetings; Project Analysis. The Design-Builder will meet with the District, the Project Designers and all the other Project stakeholders to fully understand the program, the Construction Documents and all other aspects of the Project. The Design-Builder shall attend the regularly scheduled meetings with the District and the Project Designers to advise the District on matters of Site use, improvements, selection of materials, building methods, construction details, building systems, equipment, phasing and sequencing.

1. The Design-Builder will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Construction Documents. The Design-Builder will promptly notify the District in writing whenever the Design-Builder determines that any Construction Documents are inappropriate for the Project and or cause changes in the scope of Work requiring an adjustment in the Cost Model, Master Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2. The Design-Builder, when requested by the District or at its own initiative, if sanctioned by the District, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The Design-Builder will assist the Project Designers in the preparation of drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.

B. Construction Management Plan.

1. Preparing Plan. The Design-Builder will prepare a construction management plan (the "Management Plan"), that will detail, but not necessarily be limited to, the Design-Builder's determinations concerning: (a) Project milestone dates and the Master Schedule, including the broad sequencing of the design and construction of the Project; (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (c) alternate strategies for fast-tracking and/or phasing the construction; (d) separate bidding documents/packages and strategies for the early procurement of long-lead equipment and/or materials; (e) the number of separate subcontracts to be awarded to Subcontractors and suppliers for the Project construction; (f) permitting strategy; (g) safety and training programs; (h) construction quality control; (i) the Project Cost Model and basis of the model; (j) a matrix summarizing each Project team member's responsibilities and roles related to the Services; and (k) construction security.

2. Maintaining Plan. The Contract Manager shall keep the Management Plan current throughout the pre-construction services phase so that the Management Plan is ready for implementation at the start of the construction phase. The update/revisions will take into account: (a) revisions in Construction Documents; (b) the Design-Builder's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the District, Project Designers or the Design-Builder; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and rights-of-way; (d) the fast-tracking (if any) of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment and/or materials; and (g) funding issues identified by the District.

C. Schedule Development. In accordance with the Management Plan, the Design-Builder shall prepare a master schedule for the Project (the "Master Schedule"). In preparing the Master Schedule, the Design-Builder shall establish: (i) detailed Critical Path Method ("CPM") schedules for the pre-construction/design phase and the construction phase of the Project with concurrence of the District and the Project Designers, (ii) monitor the Project schedules during the pre-construction phase and ensure that the Master Schedule is updated as necessary and advise the District of any schedule deficiencies. The Design-Builder shall utilize Microsoft Project, P6, or equivalent scheduling software to prepare, provide and maintain the detailed CPM schedules unless the District requests use of a different scheduling product.

1. Each Project team member is responsible for its compliance with the Master Schedule requirements. The Design-Builder will update and maintain the Master Schedule on behalf of and to be used by the Project team based on input from other team members. The Master Schedule will be consistent with the most recent revised/updated Management Plan. The Master Schedule will be presented in graphical and tabular reports as agreed upon by the Project team. The Master Schedule will include all tasks and deliverables required by each member of the Project team to identify long lead items, real property transactions, utility relocation activity, permitting requirements, etc. If Project phasing as described below is required, the Master Schedule will indicate milestone dates for the phases. The Master Schedule shall include resource loading for manpower and cash flow. The manpower loading shall include the daily manpower required to complete the task as shown on the Master Schedule.

2. The Design-Builder will include and integrate in the Master Schedule the services and activities required of the District's Project Manager, Project Designers and Design-Builder, including all construction phase activities. The Master Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, schematic design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and suppliers, (f) major stages of construction, (g) start-up, and (h) occupancy of the completed Work by the District. The Master Schedule will 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, milestone dates for various construction phases, total Float for all activities, relationships between the activities, District's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

3. The Master Schedule will be updated and maintained by the Design-Builder with assistance from the Project team throughout the pre-construction services phase such that it will not require major changes at the start of the construction phase to incorporate Design-Builder's plan for the performance of the construction phase Work. The Design-Builder will provide updates and/or revisions to the Master Schedule for use by the Project team, whenever required, but no less often than monthly; provided, however, that no such changes shall alter the date of Substantial Completion without the District's prior, written approval. The Design-Builder will include with such submittals a narrative describing its analysis of the progress achieved versus that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

4. Prior to transmitting Contract Documents to Subcontractors, the Design-Builder shall prepare a pre-proposal construction schedule for each part of the Project and make the schedule available to the Subcontractors. The Design-Builder shall provide a copy of the Master Schedule to the Subcontractors. As part of the notice of award by the Design-Builder to each Subcontractor, the Design-Builder shall inform each Subcontractor of the requirements for the preparation of the Master Schedule. Each Subcontractor shall prepare its own Subcontractor construction schedule in accordance with the requirements of the Contract Documents.

D. Cost Models; Cost Estimates and Schedule of Values. The Design-Builder shall provide the District with detailed cost information for all aspects of the Project. Each cost model will contain a detailed estimate of the direct cost (including materials, labor and equipment) pertaining to each aspect of the Project along with the cost of the contract bonds, the cost of the Project's required insurance, the cost of all applicable taxes, Design-Builder's general conditions, Design-Builder's fee and the amount of Contractor's Contingency and shall be consistent with such requirements as determined by the District or the Project Designers. The individual aspect cost models shall be collectively referred to as the "Cost Model."

1. As soon as practical during the conceptual design phase, the Design-Builder will review all available information regarding the design and scope of the Project, and based on the Design-Builder's experience in performing similar work, develop a Cost Model for review and approval by the District. Once approved by the District, the Cost Model will be continually updated and kept current as the design progresses throughout the pre-construction phase until a final GMP for the entire Project is established. The Cost Model will be the Design-Builder's best representation of the complete functional Project's construction costs. The Design-Builder will communicate to the Project team any assumptions made in preparing the Cost Model. The Cost Model will support the Design-Builder's construction cost estimates and may be broken down initially as dictated by the available information. The Cost Model will also include allowances as agreed to by the Project team, including but not limited: (a) allowances for potential additional quantities and/or additional Work that the District may require, and (b) any costs related to investigations described in Section 2.1.

2. After receipt of the Project Designers' most current documents from certain specified design milestones, the Design-Builder will provide a detailed written report to the Project team regarding the impact of and changes to the Cost Model based on the Design-Builder's review of Construction Documents made available at the specified design milestone. The District's Project Manager, Project Designers and the Design-Builder will reconcile any disagreements on the estimate to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design milestone. The design milestones applicable to this paragraph are: conceptual design completion, schematic design completion, and detailed design completion at 30%, 60%, 90% and 100%. If no consensus is reached, the District will make the final determination. If the Project team requires additional updates of the Cost Model beyond that specified in this Subsection, the Design-Builder will provide the requested information in a timely manner.

3. If, at any point, the estimate submitted to the District exceeds previously-accepted estimates or other key aspects of the Cost Model or the District's Project budget, the Design-Builder will make appropriate recommendations to the District's Project Manager and Project Designers on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the District's basic program) such that it is equal to or less than the established Project budget.

4. Near completion of the 60% detailed design review and included with the associated report, the Design-Builder will also submit to the District for review and approval a "Schedule of Values" which complies with the following requirements. The Schedule of Values will highlight significant variances from any previously submitted preliminary Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Management Plan and the Design-Builder's Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) reconcile used and remaining Contractor's Contingency, (d) detail all other allowances and unit price Work shown and specified in the detailed Construction Documents and (e) material and equipment costs, labor costs, General Conditions costs, hourly labor rates, payment for pre-construction services and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.

5. The Design-Builder will submit to the District a final Schedule of Values based on the 100% detailed design set of Construction Documents for the entire Project or any portion thereof,

which final Schedule of Values will also be included in any proposed GMP(s).

6. Upon request by the District, the Design-Builder will submit to the District a cash flow projection for the Project based on the current updated/revised Master Schedule and the anticipated level of payments for the Design-Builder during the pre-construction and construction phases. In addition, if requested by the District and based on information provided by the District, the Design-Builder will prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist the District in the financing process.

E. Traffic Control/Sequencing Plans. The Design-Builder shall provide the District with (1) a detailed traffic control plan, in accordance with Section 4.5(Q) below and (2) construction sequencing plans. Upon approval by the District, the traffic control plan and the construction sequencing plan shall be attached hereto as Exhibit H, and incorporated herein by reference.

F. Phasing; Long Lead Procurement. The Design-Builder shall review the Construction Documents and make recommendations to the District with respect to the phase issuance of the Construction Documents to facilitate phased construction of the Work, if appropriate. The Design-Builder will 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. The Design-Builder may also recommend to the District and to the Project Designers a list and a schedule for purchasing items necessary for the Project which may require substantial lead time for procurement (the "Long Lead Items"), which may be separately procured by the District or included as a separate GMP in this Agreement, at the discretion of the District. The Design-Builder shall make such adjustments to the Master Schedule as necessary to accommodate the procurement process for the Long Lead Items. Upon purchase, the Design-Builder shall safeguard the Long Lead Items until installed as part of the Project.

G. Other Deliverables; Pre-Construction Progress Payments. The Design-Builder shall provide the District with written plans for the pre-qualification of Subcontractors (according to the Subcontractor Selection Program), subcontract bid packages, project safety, quality control, owner training and commissioning. The Parties agree that the District may direct the removal of a Subcontractor for safety or performance issues, which shall be provided for in the subcontractor plans. The Design-Builder will also prepare and submit monthly pay applications to the District for work performed during the specific payment period for the pre-construction phase of the Project.

ARTICLE 3 FEES AND GUARANTEED MAXIMUM PRICE PROPOSAL

3.1 Fees for Design and Pre-Construction Phase Services. Design-Builder shall be compensated for Design and Pre-Construction Services ("Basic Services") in accordance with this Section. These Basic Services fees shall be compensated on an hourly basis subject to agreed-upon hourly rates and/or costs with a stipulated not-to-exceed total fee as provided below:

Design-Builder's Design Services Not-To-Exceed Fee in the amount of _____ Dollars
(\$ _____);
Design-Builder's Pre-Construction Services Not-To-Exceed Fee in the amount of _____ Dollars
(\$ _____);
These fees will be authorized incrementally and shall not include any additional markups. Initial fees contemplated by this Agreement include:

INITIAL AUTHORIZED FEES		Phase 1	Phase 2	Total
Design Services Fees				
phase		\$ ***, ***, ***, **	\$ ***, ***, ***, **	\$ ****, ****, ****, **
phase		\$ ***, ***, ***, **	\$ ***, ***, ***, **	\$ ****, ****, ****, **
phase		\$ ***, ***, ***, **	\$ ***, ***, ***, **	\$ ****, ****, ****, **

phase	\$ ***,***,**.*	\$ ***,***,**.*	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
Sub-Total Design Services Fees	\$ ****,**.*	\$ **** **	\$ **** **
Pre-Construction Services Fees			
phase	\$ ***,***,**.*	\$ **** **	\$ **** **
phase	\$ ***,***,**.*	\$ **** **	\$ **** **
phase	\$ ***,***,**.*	\$ **** **	\$ **** **
phase	\$ ***,***,**.*	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
Sub-Total Pre-Construction Services Fees	\$ ****,**.*	\$ **** **	\$ **** **
Total Initial Services Fees	\$ **** **	\$ **** **	\$ **** **
Initial Reimbursable Expenses	\$ **** **	\$ **** **	\$ **** **
FUTURE FEES AUTHORIZED BY AMENDMENT	Phase 1	Phase 2	Total
Design Services Fees			
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
Construction Administration	\$ **** **	\$ **** **	\$ **** **
Closeout / Warranty	\$ **** **	\$ **** **	\$ **** **
Sub-Total Design Services Fees	\$ **** **	\$ **** **	\$ **** **
Pre-Construction Services Fees			
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
phase	\$ **** **	\$ **** **	\$ **** **
Sub-Total Pre-Construction Services Fees	\$ **** **	\$ **** **	\$ **** **
Total Future Services Fees	\$ **** **	\$ **** **	\$ **** **
Future Reimbursable Expenses	\$ **** **	\$ **** **	\$ **** **

3.2 GMP Submittal Process. At the stage of the pre-construction phase services as determined by the District, the Design-Builder shall, if requested by the District, submit a GMP Proposal, which shall be the sum of the estimated Cost of the Work relating to completion of the Scope for the Project and the Construction Fee relating to the Project based upon the most-current version of the Cost Model. Each GMP Proposal shall include, in the Cost of the Work, those taxes that are applicable at the time the GMP is established. Each GMP is the total cost of the applicable portion of the Project including the cost of labor, equipment, supplies, materials, services and allowances to complete the applicable portion of the Project. The cost data is directly correlated to the specific Construction Documents in existence at the time each GMP Proposal is prepared. The assumptions used in the preparation of the GMP Proposal shall be identified by the Design-Builder as part of the GMP Proposal. In submitting this proposal, Design-Builder represents that:

- A. Document Review. Design-Builder has examined and carefully studied the Contract Documents for the construction phase, including all addenda.

B. Site Visit. Design-Builder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance and furnishing of the Work.

C. Laws and Regulations. Design-Builder is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, performance and furnishing of the Work, including, but not limited to, A.R.S. § 42-5075(P), which applies to the Project contemplated within this Agreement.

D. Reports; Subsurface Conditions. Design-Builder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified in the Contract Documents for the construction phase. Design-Builder acknowledges that such new reports may not be complete for Design-Builder's purposes. Design-Builder acknowledges that District does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents for the construction phase with respect to underground facilities at or contiguous to the Site. Design-Builder has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Design-Builder and safety precautions and programs incident thereto. Design-Builder does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this GMP Proposal for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents for the construction phase.

E. Work by Others. Design-Builder is aware of the general nature of Work to be performed by District and others at the Site that relates to Work for which the GMP Proposal is submitted as indicated in the Contract Documents for the construction phase.

F. Conditions and Plans Correlated. Design-Builder has correlated the information known to Design-Builder, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents for the construction phase and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents for the construction phase.

G. Inconsistencies Resolved. Design-Builder has given Project Designers written notice of all conflicts, errors, ambiguities or discrepancies that Design-Builder has discovered in the Contract Documents for the construction phase and the written resolution thereof by Project Designers is acceptable to Design-Builder, and the Contract Documents for the construction phase are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the GMP Proposal is submitted.

H. No Improper Actions. The proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Design-Builder has not directly or indirectly induced or solicited any person, firm or corporation to refrain from proposing; and Design-Builder has not sought collusion to obtain for itself any advantage over any other contractor or over the District.

3.3 Acknowledged Construction Documents. The Design-Builder, in preparing any GMP Proposal, will obtain from the Project Designers signed, sealed, and dated Construction Documents (including all addenda) in the format and quantity required by the District, which may include electronic and/or paper copies in the District's discretion. The Design-Builder will prepare its GMP Proposal in accordance with the District's requirements and the most-current completed Construction Documents at that time. The Design-Builder will identify on the face of each document (or in the case of electronic documents within the file name and/or a cover sheet/index) the specific set/version of Construction Documents upon which its GMP Proposal is based. The Design-Builder will submit to the District's Project Manager one complete set of those documents by electronic submission using the District's preferred method and will provide one complete set to the Project Designers by electronic or hard copy submission (as requested by the Project Designers).

3.4 Direct Construction Costs. Direct Construction Costs means the sum of the amounts that the Design-Builder actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Direct Construction Costs include only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

A. General Conditions Costs. Design-Builder is entitled to receive reimbursement for the actual cost of the allowable General Conditions items incurred between issuance of the applicable Notice to Proceed and 30 days after the date scheduled for Substantial Completion. Design-Builder is entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after Substantial Completion, only with prior written approval of the District. "Allowable General Conditions Cost Line Items" are identified below and in Exhibit I, attached hereto and incorporated herein by reference. These items shall be included in the General Conditions Cost amount shown as a line item in the applicable GMP Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit I will not be allowed as a General Condition Costs.

1. Personnel costs, which include wages paid for Design-Builder's hourly employees and salaries of Design-Builder's salaried personnel when (a) stationed at the field office located at the Site and working on matters directly related to the Project, in whatever capacity employed; (b) engaged on the road expediting the production or transportation of material and equipment; and (c) performing functions directly related to the Work from the principal or branch office. The project manager's salary may be included in the General Conditions Costs only when the project manager is directly managing the Project. Personnel costs also include the cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Design-Builder for services performed for the Project.
2. Reasonable transportation, travel and hotel expenses of the Design-Builder's personnel incurred in connection with the Work.
3. Costs of long-distance telephone calls, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Design-Builder's jobsite office if incurred at the Site and directly and solely in support of the Work.
4. Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Design-Builder, if such items are fully consumed in the construction of the Work and are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its recoverable cost under this Contract shall be based on the original cost of the item less its fair market salvage value.
5. Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Design-Builder, provided they are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I and the District has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Design-Builder, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the District and shall be in accordance with either the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, or the most-recent rates provided by Equipmentwatch.com, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

6. The aggregate rental cost of any item charged to the District shall not exceed 75% of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds 75% of the purchase and maintenance price, Design-Builder shall purchase the equipment and turn it over to the District upon final completion of the Work or, at the District's option, credit the District with the fair market resale value of the item.

7. Permit and inspection fees paid by Design-Builder where the District is exempt will not be reimbursed by the District.

8. Cost of premiums for normal and customary Design-Builder's Subcontractor default insurance including Subcontractor's liability, workers' compensation, builders risk, and commercial general liability, and the cost of any required performance and payment bonds, shall be reimbursed at the actual, reasonable, and verifiable premium or bond cost incurred for the Project (net of all applicable rebates, returns of premium, recoveries, and credits), or at such alternative project-specific rate(s) as the District and Contractor may mutually agree in writing at the time the applicable GMP is established. If the Contractor intends to utilize Subcontractor Liability Wrap-up Coverage (Z-25) or similar wrap-up coverage, the GMP shall include the cost of such coverage as a separate line item and the Contractor shall credit the GMP for any corresponding amounts included in Subcontractor bids, as applicable. All insurance and bond costs shall be identified as separate line items within the applicable GMP and shall be supported by commercially reasonable documentation acceptable to the District.

9. Governmental transaction privilege sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption, in the form and at the rates legally enacted on the date of the first GMP, whether such taxes are effective or scheduled to go into effect. Such taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by the District as Direct Construction Costs.

B. Cost of the Work. Design-Builder is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of the District's written Notice to Proceed with the Construction Phase Work through Final Completion of the Project. Design-Builder is not entitled to reimbursement for Cost of the Work costs incurred before receipt of the District's written Notice to Proceed. Cost of the Work includes the following:

1. Costs of materials, supplies and equipment purchased directly by the Design-Builder and incorporated into or consumed in the performance of the Work, including transportation charges, to the extent such costs of materials, supplies and equipment are not included in the General Conditions Costs.

2. Costs of removal and disposal in accordance with all applicable laws and regulations of Site debris, non-hazardous substances and waste materials, if not otherwise included in General Conditions.

3. Payments made by Design-Builder to Subcontractors and their vendors or suppliers for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

4. Payments earned by Design-Builder for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Contract and approved by the District.

5. Fees and expenses for design services procured by the Design-Builder related to necessary modifications to the Construction Documents.

6. Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

7. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office at the Site.

8. All water, power and fuel costs necessary for the Work.

9. Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Design-Builder or any person or entity for whom the Design-Builder is responsible.

10. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contract Price as set forth below, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, subject to the maximum price limitation established by the respective GMP.

11. Costs related to the Design-Builder's safety program related to the Project.

C. Exclusions from General Conditions Costs and Cost of the Work. The General Conditions Costs and Cost of the Work shall not include the following:

1. Any professional fees paid by the District to consultants retained directly by the District.

2. Any costs paid directly by the District to Subcontractors or suppliers retained directly by the District and outside the scope of all GMPs.

3. Any additional service costs as defined herein.

4. Any other costs not within the control of the Design-Builder or identified as being not within any GMP.

5. Any fees paid to the Design-Builder except those fees that may be paid to Design-Builder for Pre-construction Phase Services above.

D. Allowances: Design-Builder shall include in the GMP all Allowances stated in the Contract Documents. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the District may direct, but Design-Builder shall not be required to employ persons or entities against which Design-Builder makes reasonable objection. Unless otherwise provided in the Contract Documents:

1. Materials and equipment under an Allowance shall be selected by the District within a reasonable time frame as defined in the District approved Project CPM Schedule;

2. Allowances shall cover the cost to Design-Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts;

3. Allowances shall not include professional or construction fees, Construction General Conditions, or bond or insurance premiums;

4. Allowances shall cover Design-Builder's costs for unloading and handling at the Site, labor, installation costs and other expenses;

5. Whenever costs are more than or less than Allowances, the GMP may be adjusted accordingly by Change Order in accordance with provisions of Article 9. The amount of the Change Order shall reflect the difference between actual costs and the Allowances plus Fee on such difference in accordance with Article 9 hereof if the actual costs are greater than the Allowances.

E. Construction Contingency.

1. The GMP Proposal may include an amount (the “Construction Contingency”) to be used to fund increases in the Direct Construction Costs of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The Construction Contingency shall be negotiated between the Parties and it shall reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted.

2. On a monthly basis, after finalization (i.e., “buyout” or subcontractor contract issuance) of a line item, the Schedule of Values will be adjusted to reflect the actual amount. The Construction Contingency shall not be carried in line item amounts after finalization. The Construction Contingency, upon approval of the District, shall be for Design-Builder’s use and shall be increased by amounts not expended on other line item bid packages and shall decrease by additional amounts required to be expended on other line item bid packages. The Design-Builder may use the Construction Contingency for legitimate unforeseen construction expenses, subject to District’s Project Manager review or approval, at District’s discretion.

3. Design-Builder shall submit detailed monthly reports to District indicating how the Construction Contingency was used in the reporting period, and the status of the Contractor’s Contingency. The District has the authority to reject any use of the Construction Contingency after it has been submitted if the District believes in its reasonable judgment that some or all of the amount included in the use of the Construction Contingency is not a legitimate expense for the Project. Upon the District’s rejection of the use of the Construction Contingency, Design-Builder will thereupon credit the Construction Contingency amount back in the next subsequent payment request. Any amounts remaining in the Construction Contingency at Final Completion shall be deemed Savings and will be allocated to District as such. Should the Construction Contingency be exhausted prior to award of all the bid packages, any subsequent overruns in bid package costs shall be Design-Builder’s sole responsibility, with no additional compensation due thereon from the District absent approval of additional contingency funds as part of an approved change order.

4. Any re-allocation of funds from the Construction Contingency to cover increases in the Direct Construction Costs must be approved by the District’s Project Manager in advance and in writing, which approval shall not to be unreasonably withheld. In written requests to use the Construction Contingency, the Contractor shall provide detailed documentation of the scope of work affected and the basis for any increases in costs resulting in the need to use Contractor’s Contingency funds.

5. The Construction Contingency shall not be used for Construction General Conditions unless approved in writing by the District.

6. Design-Builder will include an explicit requirement that change orders between Design-Builder and the Subcontractors will be priced consistent with the requirement of Article 8 of this Agreement with adequate itemized change order pricing regardless of whether or not there is a comparable change order between Design-Builder and the District. In addition, Design-Builder shall retain, and make available to District upon request, all bid documents including requests for proposals, requests for quotes, and bid responses from both successful and unsuccessful bidding Subcontractors.

7. As the Construction Documents are finalized and the buyout of the Work progresses the Construction Contingency amount shall be reduced by mutual agreement of the District and Design-Builder. The buyout shall occur within the first 20% of the construction duration for each Notice to Proceed issued for construction. Should savings occur after the buyout stage, such savings, and related reductions to the Construction Contingency amount, will be retained by the District.

F. Calculation Methods; Audits.

1. The District and the Design-Builder understand and agree that any GMP agreed to under this Project will be administered as a measured quantity/unit price guaranteed not-to-exceed contract. This not-to-exceed amount is defined by the individual work items and their associated competitively bid and/or negotiated unit prices plus negotiated on-site general conditions, fee structures, markups and Construction Contingency. Final payout will be based on field measured final completed quantities, approved unit prices and approved Change Directives and Change Orders. Furthermore, the term "actual cost" is defined as the final negotiated unit prices (costs) mutually agreed to by the District and Design-Builder. The District and the Design-Builder understand and agree that individually priced, "self-performed" items may include the cost associated with the risk of delivering the work.

2. The District and the Design-Builder understand and agree that the District, its authorized representatives, and/or the appropriate federal or state agencies may audit the Design-Builder's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate any GMP, and including, but not limited to, self-performed items, qualifications-only selected Subcontractor items, Change Orders, use of allowance funds and use of Construction Contingency funds. The District and its authorized representatives shall have access, during normal working hours, to all necessary Design-Builder and Subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Subsection. The District shall give Design-Builder or Subcontractor reasonable advance notice of intended audits.

G. Discounts. All discounts for prompt payment shall accrue to the District to the extent such payments are made directly by the District. To the extent payments are made with funds of the Design-Builder, all cash discounts shall accrue to the Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

3.5 Construction Fee. The Construction Fee includes, but is not limited to, the following items.

A. Profit. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Design-Builder, which shall not exceed ____ percent (____%) of the total applicable GMP amount, excluding Contractor's Contingency.

B. Salaries. Salaries of Design-Builder's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

C. Overhead. Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; home office operations and support staff (i.e. accounting, purchasing); trade or professional association dues; costs for hiring and/or relocation of any of the Design-Builder's personnel; and travel, per diem and subsistence expense of Design-Builder, its officers or employees except as specifically allowed under General Conditions, which shall not exceed --% of the total applicable GMP amount, excluding Construction Contingency.

D. Financial Costs. Any financial costs incurred by the Design-Builder including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

E. Professional Fees. Any legal, accounting, professional or other similar costs incurred by the Design-Builder, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

F. Taxes. Any Federal and/or State income and franchise taxes paid by Design-Builder. Any levies, assessments, fines, penalties, sanctions or other impositions made by any governmental body against Design-Builder.

G. Damages and Related Costs. Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Design-Builder, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM schedule milestones; costs arising from Design-Builder's contractual indemnification obligations; liquidated or actual damages imposed by the District for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

H. Insurance Deductibles. The cost of any and all insurance deductibles payable by the Design-Builder and costs due to the failure of Design-Builder or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

I. Costs in Excess of GMP. Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.

J. Other Unidentified Costs. Any and all costs not specifically identified as an element of the Direct Construction Costs.

3.6 Competitive Bidding and Sub-Bids.

A. District Objections. If, prior to receipt of sub-bids or prior to award of Subcontractors or suppliers, the District objects to any nominated Subcontractor or supplier or to any self-performed Work for good reason, the Design-Builder will nominate a substitute Subcontractor or supplier, preferably if such option is still available, from those who submitted sub-bids for the Work affected. Once such substitute Subcontractors and suppliers are consented to by the District, the Design-Builder's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

B. Documents; Pre-bid Conference. The Design-Builder will distribute Construction Documents, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

C. Subcontractor Bid Submittal. The Design-Builder, at the required time, will close the bidding and collect all sub-bids received within the prescribed deadline for receipt of sub-bids. Promptly, after the closing of sub-bids, the Design-Builder will (in the presence of the District's Project Manager and Project Designers) open and read all properly and timely submitted sub-bids. The Design-Builder will submit a completed Sub-Bid tabulation form to the District's Project Manager within a reasonable time after the closing of the sub-bid opening proceedings.

D. Subcontractor Bid Evaluation. The Design-Builder, upon opening of sub-bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective suppliers selected by each apparent low sub-bidder. The Design-Builder will resolve any sub-bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

E. Notice of Intent for Subcontracts. Within 15 Days after sub-bid opening, the Design-Builder will deliver to the District's Project Manager a written notice of intent to award subcontracts, itemizing the Subcontractors and suppliers selected by the Design-Builder. The notice of intent to award subcontracts will detail (1) for each Subcontract the amount of the sub-bid and the corresponding Subcontractor or supplier, (2) the sum of sub-bids received for all intended Subcontract, and (3) trade work that the Design-Builder intends to self-perform, if any.

F. Pre-award Conference. Promptly after receipt of the notice of intent to award subcontracts, the District will conduct a pre-award conference with the Design-Builder and other Project team members. At

the pre-award conference, the Design-Builder will (1) review the nominated slate of Subcontractors and suppliers and discuss any concerns with or objections that the District has to any nominated Subcontractor or supplier; (2) discuss District concerns relating to any proposed self-performed Work; (3) review the Design-Builder's proposed Contract Price for the Work during the construction phase; (4) resolve possible time frames for the commencement date of the Contract Time for the construction phase Work; (5) schedule the pre-construction conference; and (6) discuss other matters as necessary.

3.7 Submittal Requirements. The Design-Builder shall include with each GMP Proposal a written statement of its basis, which shall include:

- A. Detailed Scope. A detailed scope of services related to the respective GMP Proposal, including a breakdown of the GMP as it relates to the applicable part of the overall Scope. The GMP shall be in accordance with the District's format as provided by the District's Project Manager.
- B. Documents. A list of the Construction Documents, including all addenda, that were used in preparation of the respective GMP Proposal.
- C. Allowances. A list of allowances and a statement of their basis.
- D. Assumptions. A list of the assumptions and clarifications made by the Design-Builder in the preparation of the respective GMP Proposal to supplement the information contained in the Construction Documents.
- E. Substantial Completion. The Substantial Completion date, if applicable, upon which the respective GMP Proposal is based and the Master Schedule for the Work upon which the respective Substantial Completion date is based, including a clear statement of the number of rain delay days included within the Master Schedule.
- F. Alternate Prices. A schedule of applicable alternate prices.
- G. Unit Prices. A schedule of applicable unit prices.
- H. Additional Services. A statement of Additional Services included, if any.
- I. Acceptance Period. The time limit for acceptance of the GMP Proposal.

3.8 GMP Proposal Review. The Design-Builder shall meet with the District and the Project Designers to review each GMP Proposal. In the event that the District discovers any inconsistencies or inaccuracies in the information presented, the District shall give written notice to the Design-Builder, who shall make appropriate adjustments to the GMP, its basis or both.

A. Independent Estimate. Upon receipt of any GMP Proposal from the Design-Builder, the District may submit the same documents that were used by Design-Builder in developing its GMP to an independent third party for review and verification. The third party will develop an independent estimate of the Cost of the Work and review the Master Schedule for the associated scope of the GMP Proposals.

B. GMP Exceeding Independent Estimate. If the Design-Builder's GMP Proposal is greater than the independent third party's estimate, the District may require the Design-Builder to reconfirm its GMP Proposal. The Design-Builder will accept the independent third party's estimate for the Cost of the Work as part of its GMP or present a written request, within seven Days of receiving the estimates, to the District identifying, explaining and substantiating the differences. The Design-Builder may be requested to, or at its own discretion may, submit a revised GMP Proposal for consideration by the District. At that time, the District may do one of the following:

- 1. Accept the Design-Builder's original or revised GMP Proposal, if within the District's budget, without comment.

2. Accept the Design-Builder's original or revised GMP Proposal that exceeds the District's budget and indicate in writing to the Design-Builder that the Project budget has been increased to fund the differences.

3. Reject the Design-Builder's original or revised GMP Proposal because it exceeds either or both the District's budget and the independent third party's estimate, in which event, the District may terminate this Agreement.

C. Design Changes During Negotiation. If, during the review and negotiation of GMP Proposals, design changes are required, the Design-Builder will authorize and cause the Project Designers to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the Design-Builder. The Design-Builder will promptly notify the Project Designers and District's Project Manager if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

3.9 No Prior Costs. Prior to the District's acceptance of a GMP Proposal, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work related to such GMP Proposal, except as provided in this Agreement or as the District may specifically authorize in writing.

3.10 Acceptance; Effect. Upon acceptance by the District of each GMP Proposal, the GMP contained therein and its basis shall be set forth in the applicable GMP Amendment. Once established, the GMP and the corresponding Substantial Completion date shall be subject to modification only as provided in Articles 6 and 8 below. The District's approval of the GMP Amendment may include the amount of the District's Contingency. The amount of the District's Contingency will be set solely by the District and will be in addition to the Project costs included in the Design-Builder's GMP Proposals. Use and management of the District's Contingency is at the District's sole direction.

3.11 GMP Effective Date. Each GMP Proposal shall not become a part of this Agreement until the District accepts such GMP Proposal in writing by executing the applicable GMP Amendment, on or before the date specified in each such GMP Proposal for such acceptance.

3.12 Failure to Agree Upon GMP. If the District and the Design-Builder do not agree to any provisions of the GMP Proposal, including the designated Default Neutral Arbitrator, all references in this Agreement to the GMP shall not be applicable, and the Parties shall proceed on the basis of reimbursement as provided below.

ARTICLE 4 CONSTRUCTION SERVICES

4.1 Control of Construction. After the date any Amendment to this Agreement is executed by the District and the Design-Builder approving a GMP Proposal, the Design-Builder shall become responsible for the means, methods, sequences and procedures used in the construction of the portion of the Project related to such GMP Proposal and shall proceed with the Design-Builder's Construction Services related to the GMP Proposal under this Agreement.

4.2 Completeness and Accuracy of Design-Builder Work. The Design-Builder will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other pre-construction deliverables prepared or compiled pursuant to its obligations under this Agreement and will at its sole own expense correct its work or deliverables. The fact that the District has accepted or approved the Design-Builder's work or deliverables will in no way relieve the Design-Builder of any of its responsibilities under the Agreement, nor does this requirement to correct the work or deliverable constitute a waiver of any claims or damages otherwise available by law or contract to the District.

4.3 Alteration in Character of Work. In the event an alteration or modification in the character of work or deliverable materially increases or decreases the scope of service, cost of performance, or Master Schedule as determined by the District, the Work or deliverable will nonetheless be performed as directed by the District. However, before any altered or modified work begins, a Change Directive or Change Order must be approved and executed by

the District and the Design-Builder to address such change. Such Change Directive or Change Order will not be effective until approved by the District. Additions to, modifications to, or deletions from the Project provided herein may be made, and the compensation to be paid to the Design-Builder may be adjusted accordingly, only by mutual agreement of the Parties. No claim for extra work done or materials furnished by the Design-Builder will be allowed by the District except as provided herein, nor will the Design-Builder do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing by the District. Work or material(s) furnished by the Design-Builder without such prior, written authorization will be the Design-Builder's sole jeopardy, cost, and expense, and the Design-Builder hereby agrees that, without prior, written authorization, no claim for compensation for such work or materials furnished will be made.

4.4 Construction Phase General Services. The Design-Builder shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the District. All Work will be performed in a good and workmanlike and substantial manner according to the standards set forth in Subsection 1.6(A) above. The Work shall be to the satisfaction of the District and strictly pursuant to and in conformity with the Project's Contract Documents, as modified and agreed to by the District. Design-Builder's Representative shall be reasonably available to District and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with District but not less than once each week and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the written consent of District.

A. Government Approvals and Permits.

1. The Design-Builder shall be primarily responsible to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The Design-Builder is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices. The District will be the applicant for the following permits; however, the Design-Builder shall be responsible for any work associated with obtaining the permits, as directed by the District.
2. Copies of the required permits and notices must be provided to the District's Representative prior to starting the permitted activity. In the case of a governing Fire Department permits, a copy of the application for permit shall also be provided to the District's Representative. This provision does not constitute an assumption by the District of an obligation of any kind for violation of said permit or notice requirements.
3. Owner shall be responsible for permit(s) and fees for building and demolition permits. Owner will also pay review fees for grading and drainage, water, sewer, and landscaping. Owner shall also pay for utility design fees for permanent services. The Design Builder will pay for any plan review and permit fees associated with deferred submittals as required by the authority
4. Design-Builder shall be responsible for all other permits and review fees not specifically listed above.
5. Design-Builder is responsible for all water bills on the Project meters until Substantial Completion of the Project. Arrangements for construction water are the Design-Builder's responsibility.

B. Pre-construction Activities.

1. Prior to the commencement of any Work, the District's Project Manager will schedule a pre-construction conference. The purpose of this conference is to establish a working relationship between the Design-Builder, utility firms, various District agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the Work and Master Schedule, submittal schedule, cost breakdown of major items, payment requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and

emergency telephone numbers for all representatives involved in the course of construction. Minimum attendance at the preconstruction conference shall be the Design-Builder's Representative, the job superintendent, the Design-Builder's safety officer and the individuals deemed necessary by the District.

2. The Notice to Proceed date will be set by the District. At or after the pre-construction conference and upon delivery of the required bonds and insurance in a District-approved format or at such other time as the District may elect, a Notice to Proceed letter will be issued confirming the construction start date, the Contract Time and the Substantial Completion date. Failure by the Design-Builder to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

3. The Design-Builder shall update the Schedule of Values based on the categories used in the buyout of the Work but not greater than the approved GMP; the update shall identify the Design-Builder's Contingency. The Schedule of Values will subdivide the Work into all items comprising the Work.

C. Project Management.

1. The Design-Builder shall refine the Management Plan for the Project. In refining the Management Plan, the Design-Builder shall consider the District's schedule, cost and design requirements for the Project. The Design-Builder shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the District. The Management Plan shall also include a description of the various proposal packages recommended for the Project. The Management Plan shall be presented to the District for acceptance.

2. The Design-Builder shall conduct periodic Project meetings attended by the District's Project Manager, the Project Designers and other necessary parties. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of construction progress. The Design-Builder shall prepare and distribute minutes of these meetings to the District's Project Manager, the Project Designers and others in attendance.

3. The Design-Builder shall coordinate transmittal of documents to regulatory agencies for review and shall advise the District of potential problems in completing such reviews.

4. The Design-Builder shall assist the District in public relations activities and shall prepare information for and attend public meetings regarding the Project.

D. Reports.

1. The Design-Builder shall prepare and distribute design phase change reports monthly to the District that shall list all District-approved Change Directives and Change Orders as of the date of the report and shall state the effect of the Change Directives and Change Orders on the Project budget and the Master Schedule.

2. The Design-Builder shall prepare and distribute schedule maintenance reports monthly to the District comparing the actual and scheduled dates for Subcontractors' contract awards and completion of each such Subcontractor's portion of the Project.

3. The Design-Builder shall prepare and distribute the Project cost reports monthly to the District specifying actual award prices and construction costs for each of the individually awarded components of the Project as compared to the Project budget.

4. The Design-Builder shall prepare and distribute cash flow reports monthly to the District specifying actual cash flow for each of the individually awarded components of the Project as

compared to the projected cash flow.

5. The requirements for filing reports set forth in this Section 4.4(D) shall not be deemed to meet the requirements for requests for extensions of time or requests for Change Directives and Change Orders as set forth in Article 6 and Article 8 below.

4.5 Work Management.

A. Design-Builder Resources. Unless otherwise provided in the Contract Documents to be the responsibility of District or a separate contractor, Design-Builder 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 Design-Builder to complete the Work according to the Contract Documents. The Design-Builder shall provide and maintain a management team on the Site to provide contract administration. The Design-Builder shall establish and implement coordination and communication procedures among the Design-Builder, the District, the Project Designers and Subcontractors.

B. Means, Methods and Techniques. Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. Supervisor Presence. Design-Builder's Representative or the Design-Builder's Superintendent shall be present at the Site at all times that construction activities are taking place.

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.

2. In the event of noncompliance with this Subsection, the District may require the Design-Builder to stop or suspend the Work in whole or in part.

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

E. Measurements. Before ordering materials or doing work, the Design-Builder and each Subcontractor shall verify measurements at the Site and shall be responsible for the accuracy of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the plans; differences shall be submitted to the District for resolution before proceeding with the Work.

F. Field Measurements and Conditions. The Design-Builder shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Design-Builder with the Construction Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the District immediately.

G. Grades, Lines, Levels and Benchmarks. The Design-Builder shall establish and maintain all building and 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 civil engineer or surveyor licensed as such in the State of Arizona.

H. Proper Employee Conduct. Any person employed by the Design-Builder or any Subcontractor who, in the opinion of the District, does not perform his work in a proper, skillful and

safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the setting of the Site, shall, at the written request of the District, be removed from the Site by Design-Builder or Subcontractor employing such person, and the person shall not be employed again in any portion of Work without the written approval of the District. The Design-Builder or Subcontractor shall hold the District harmless from damages or claims which may occur in the enforcement of this Subsection.

I. Coordination of Activities. Design-Builder shall coordinate the activities of all Subcontractors. If District performs other work on the Project or at the Site with separate contractors under District's control, Design-Builder agrees to reasonably 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.

J. Document Control. The Design-Builder shall establish and implement procedures for expediting and processing requests for information, Shop Drawings, material and equipment sample submittals, contract schedule adjustments, Change Directives, Change Orders, substitutes, payment requests and the maintenance of logs. The Design-Builder shall maintain daily job reports. The Design-Builder shall be the party to whom requests for information, submittals, Subcontractor schedule adjustments, substitutions, Change Directive requests, Change Order requests and payment requests shall be submitted. All information required to be submitted under this section shall be managed using the District's Project Management Information System (PMIS) unless otherwise agreed to by the District.

K. Subcontractor Meetings. Periodically, the Design-Builder shall conduct meetings at the Site with each Subcontractor. The Design-Builder shall conduct coordination meetings with all Subcontractors. The Design-Builder shall record, transcribe and distribute minutes to all attendees, the District and the Project Designers.

L. Coordination of Inspections and Testing. Technical inspection and testing provided by the Project Designers or others who are not Subcontractors shall be coordinated with the Design-Builder. The Design-Builder shall be provided a copy of all inspection and testing reports on or before the next business day after the inspection or test. The Design-Builder is not responsible for providing, nor does the Design-Builder control, the actual performance of such technical inspection and testing. The Design-Builder is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

M. No Subcontractor Reliance. Design-Builder shall ensure that each Subcontractor (1) has inspected the Site and has thoroughly reviewed this Agreement as the same may be revised by the District, and is not relying on any opinions or representations of the District, (2) agrees to perform and complete the Work in strict accordance with this Agreement and under the Design-Builder's direction, (3) agrees that any exclusions of any Work must be approved in writing by the Design-Builder prior to acceptance of any agreement between Design-Builder and a Subcontractor or same shall not be excluded hereunder, (4) is responsible for all safety precautions and programs and shall provide all protection and necessary supervision to implement said precautions and programs as set forth in Section 4.13 below, (5) shall provide all competent supervision necessary to execute all Work and any work incidental thereto in a thorough, first-class, workmanlike manner and (6) has acknowledged that it is Subcontractor's responsibility that all of the Work and any work incidental thereto conforms to, and is performed in accordance with, Applicable Law.

N. Subcontractor Change Request. The Design-Builder shall review the contents of a request for changes to the subcontract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Design-Builder's analysis reveals that the request is valid, the Design-Builder shall prepare a detailed report to the District for approval in accordance with Articles 6 and 8 below, as applicable. The Design-Builder shall also prepare and timely deliver a detailed report to the District of other

such requests and requests found to be invalid and timely inform the Subcontractor of any such determination. The Design-Builder shall prepare the necessary change documents for signature by the Subcontractor.

O. Quality Control. The Design-Builder shall establish and implement a program to monitor the quality of construction by itself and by Subcontractors. The purpose of the program shall be to protect the District against defects and deficiency in the Work of the Design-Builder or the Subcontractors. The Design-Builder shall reject the Work and transmit to the Subcontractor a notice of nonconforming work when the Design-Builder believes the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Design-Builder is not authorized as part of this service to change, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

P. Subcontractor Document Request. The Design-Builder shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Project Record Documents to the District.

Q. Traffic Control. All traffic affected by the Work under this Agreement shall be regulated in accordance with the most recent revision of the United States Department of Transportation Manual on Uniform Traffic Control Devices (the "MUTCD") and the Maricopa County Department of Transportation ("MCDOT") Traffic Control Manual (the "Barricade Manual") (the MUTCD and the Barricade Manual are collectively referred to herein as the "Traffic Control Requirements"), which are incorporated herein by reference; provided, however, that this Agreement shall govern in a conflict with the terms of the MUTCD or the Barricade Manual. At the time of the pre-construction conference, each Subcontractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measures, as necessary. At the same time, the Design-Builder will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents. The Design-Builder shall ensure that Subcontractors adhere to the following:

1. All traffic control devices and advance warning signs (such as REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT and DO NOT PASS) required for the Work under this Agreement shall be placed in accordance with the Traffic Control Requirements.

2. The Subcontractor provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs and shall take all necessary precautions for the protection of the Work and safety of the public. The Subcontractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

3. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Subcontractor shall conform to the standard design generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Agreement.

4. The Subcontractor shall ensure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Subcontractor shall notify the District at least 48 hours in advance for District personnel to temporarily relocate said signs. The District will direct the Subcontractor as to the correct positions to re-set all traffic and street name signs to

permanent locations when notified by the Subcontractor that construction is complete.

5. When construction activities or traffic hazards at the Site require the use of flagmen, it shall be the Subcontractor's responsibility to provide trained flagmen to direct traffic safely.

6. Manual traffic control shall be in conformity with the MUTCD, except that the designated liaison officer shall be contacted at the Phoenix Police Department.

7. When traffic hazards at the Site warrant the use of certified police personnel to direct traffic, arrangements must be made with the liaison officer at the Phoenix Police Department.

8. The assembly and turnarounds of the Subcontractor's equipment shall be accomplished using adjacent local streets when possible.

9. Equipment used and/or directed by the Subcontractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Subcontractor shall provide a flagman or off-duty, uniformed law enforcement officer to assist with spotting.

10. During construction, it may be necessary to alter traffic control. Any such alterations shall be in accordance with the Traffic Control Requirements.

11. No street within the Project area may be closed to through traffic or to local emergency traffic without prior, written approval of the District. The District may give written approval at its sole discretion and only if sufficient time exists to allow for notification of the public at least two Days in advance of such closing. Partial closure of streets within the Project shall be done in strict conformity with the District's written directions.

12. The Subcontractor shall accommodate local access to adjacent properties in accordance with the specification set forth below.

13. Where crossings of existing pavement occur, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow, as determined by the District or its authorized representative in his sole discretion. If plates cannot be used, crossings shall either be backfilled, or the Subcontractor shall provide a detour.

4.6 Control of the Work Site.

A. Debris Removal. Throughout all phases of construction, including suspension of Work, Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its Construction Services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or an agreed upon portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit District to occupy the Project or an agreed upon portion of the Project for its intended use.

B. Dust Control. Design-Builder shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the District and in accordance with the requirements of Applicable law and such other Specifications as the Parties may agree to in writing.

C. Accessibility. Design-Builder shall maintain "ADA" and "ANSI" accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall

include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Design-Builder shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

D. Material and Equipment Storage. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by the Design-Builder. When equipment or materials are no longer required for the Work, each shall be removed promptly from the Site.

E. Protection of Site. Protection of the Work, the Site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adverse conditions is solely the responsibility of the Design-Builder.

4.7 Time Management.

A. Master Schedule Updates. The Design-Builder shall, not less than monthly, adjust and update the Master Schedule and distribute copies to the District and the Project Designers. All adjustments to the Master Schedule must be (1) made for the benefit of the Project and (2) acceptable to the District; provided, however, that such adjustments or updates shall not extend the time for performance of the Work beyond the Substantial Completion date unless such extension is requested by the Design-Builder and approved by the District in accordance with Article 6 below.

B. Subcontractor Schedule Verification. The Design-Builder shall review each Subcontractor's construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

C. Subcontractor Progress Monitoring. The Design-Builder shall (1) review the progress of construction of each Subcontractor on a monthly basis, (2) evaluate the percentage completion of each construction activity as indicated in the Subcontractor's construction schedule and (3) review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic construction schedule report that the Design-Builder shall prepare and distribute to the appropriate Subcontractor, the District's Project Manager and the Project Designers. The report shall serve as the basis for (i) determining the actual progress compared to scheduled progress and (ii) determining the progress payment due to the Subcontractor. The Design-Builder shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.

D. Change Evaluation. The Design-Builder shall, prior to the issuance of a Change Directive or Change Order, determine the effect on the Master Schedule of time extensions requested by a Subcontractor. The Design-Builder may require a Subcontractor to prepare and submit a recovery schedule in the event the Subcontractor fails to meet the Master Schedule.

E. Minor Schedule Revisions. The Master Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the Design-Builder of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

F. Payment Requests. An updated Master Schedule shall be submitted monthly to the District as part of the Payment Request.

1. The Design-Builder shall provide District with a monthly status report for the Master Schedule detailing the progress of the Work, including (a) if the Work is proceeding according to schedule, (b) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (c) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the applicable GMP and within the Contract Time.

2. With each schedule submittal, the Design-Builder shall include a transmittal letter

including the following:

- a. Description of problem tasks (referenced to field instructions and requests for information), as appropriate.
- b. Current and anticipated delays including:
 - i. Cause of the delay.
 - ii. Corrective action and schedule adjustments to correct the delay.
 - iii. Known or potential impact of the delay on other activities, milestones, and the Substantial Completion date.
- c. Changes in construction sequence.
- d. Pending items and status thereof including but not limited to:
 - i. Time Extension requests.
 - ii. Other items.
- e. Substantial Completion date status:
 - i. If ahead of schedule, the number of Days ahead.
 - ii. If behind schedule, the number of Days behind.
- f. Other project or scheduling concerns.

G. District Review. District's review of and response to the Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not: (1) relieve the Design-Builder from (a) compliance with the requirements of the Contract Documents or (b) the time extension request process set forth in Section 6 below; or (2) be construed as relieving the Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

H. CPM Diagram. The updated Master Schedule shall include a CPM diagram schedule that shows the sequence of activities, the interdependence of each activity and indicate the Critical Path.

1. The CPM diagram schedule shall be in 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.
2. The CPM diagram schedule shall indicate all relationships between activities.
3. The activities making up the Master Schedule shall be in sufficient detail to ensure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.
4. The CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.
5. The CPM diagram schedule shall show all submittals associated with each Work activity and the review time for each submittal.

6. The schedule shall show milestones, including milestones for District-furnished information, and shall include activities for District-furnished equipment and furniture when those activities are interrelated with the Design-Builder activities.

7. The schedule shall include a Critical Path activity that reflects anticipated rain and weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by the District.

I. Occupancy Consideration. The Master Schedule shall consider the District's occupancy requirements showing portions of the Project having occupancy priority.

J. Float Time. Float time shall be as prescribed below:

1. The total Float within the overall Master Schedule is not for the exclusive use of either the District or the Design-Builder, but is jointly owned by both and is a resource available to and shared by both Parties as needed to meet contract milestones and the Project completion dates.

2. The Design-Builder shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing. Float time within the schedule is jointly owned; no time extensions will be considered or granted nor delay damages considered or paid until a delay occurs that extends the Work beyond the Substantial Completion date.

3. District-caused delays on the Project may be offset by District-caused time savings (i.e., Critical Path submittals returned in less time than anticipated by the Master Schedule; approval of substitution requests and credit changes which result in savings of time to the Design-Builder). In such an event, the Design-Builder shall not be entitled to have considered or receive a time extension or delay damages until all District-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

K. Occupancy/Use Plan. The Design-Builder shall prepare an occupancy plan for the Project. This plan shall be provided to the District not later than 60 Days prior to the scheduled Substantial Completion date.

4.8 Cost Management.

A. Subcontract Schedule of Values. The Design-Builder shall, in participation with the Subcontractors, determine a Schedule of Values for each of the construction subcontracts. The Schedule of Values shall be the basis for the allocation of the Contract Price to the activities shown on the Subcontractors' construction schedule. The District shall approve the subcontract Schedule of Values before acceptance for progress billings.

B. Contract Price Allocation. Each Subcontractor's construction schedule shall have the applicable portions of the Contract Price allocated among the Subcontractor's scheduled activities so that each of the Subcontractor's activities shall be allocated a price and the sum of the prices of the activities shall be equal to or less than the total Contract Price. The Design-Builder shall review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to a Subcontractor and Design-Builder shall be based on the Subcontractor's percentage of completion of the scheduled activities as set out in each Subcontractor's construction schedule report and the Subcontractor's compliance in accordance with the Contract Documents.

C. Additional Information. In instances where a lump sum or unit price is not determined prior to performing Work described in a request for changes to the Contract Price, the Design-Builder shall request from the Subcontractor records for the cost of payroll, materials and equipment and the amount of payments to its Subcontractors, if any, incurred by the Subcontractor in performing the Work.

D. Trade-off Studies. The Design-Builder shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the District's Project Manager and the Project Designers.

E. Payment Applications. In consultation with the Project Designers, the Design-Builder shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Design-Builder shall make appropriate adjustments to each payment application and shall prepare and forward a progress payment report to the District. The progress payment report shall state the total Contract Price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate for payment that shall be signed by the Design-Builder and delivered to the District. The Design-Builder shall keep the Project and the Site free and clear of all liens and claims from its Subcontractors, suppliers or materialmen.

4.9 Shop Drawings, Product Data and Samples.

A. Purpose. Shop Drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Review. The Design-Builder shall review, approve, verify, and submit electronically to the Project Designers through the District's PMIS system copies of each Shop Drawing, product data, sample, and similar submittal required by the Contract Documents as to cause no delay in the Work or in the activities of the District or of separate contractors. Submittals made by the Design-Builder that are not required by the Contract Documents may be returned without action.

C. Project Designer Approval. The Design-Builder shall perform no portion of the Work requiring submittal and review of Shop Drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Project Designers. Such Work shall be in accordance with approved submittals.

D. Design-Builder Verification. By approving, verifying and submitting Shop Drawings, product data, samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

E. No Deviation Approval; Errors. The Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Designer's approval of Shop Drawings, product data, samples or similar submittals unless the Design-Builder has specifically informed the Project Designer in writing of such deviation at the time of submittal and the Project Designer has given written approval to the specific deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples, or similar submittals by the Project Designer's approval thereof.

F. Highlight Changes. The Design-Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, samples, or similar submittals, to revisions other than those requested by the Project Designers on previous submittals.

G. Informational Submittals. Informational submittals upon which the Project Designer is not expected to take responsive action may be so identified in the Contract Documents.

H. Other Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Project Designer shall be entitled to rely upon the

accuracy and completeness of such calculations and certifications.

4.10 Materials, Quality Control, Testing and Inspection.

A. New Materials. All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

B. Inspection and Approval. All construction materials to be used in the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the District. Any material rejected by the District shall be removed immediately and replaced in an acceptable manner.

C. Test Methods. The procedures and methods used to sample and test material will be determined by the Project Designers. Unless otherwise specified, samples and tests shall be made in accordance with MAG 700 Series and the standard methods of AASHTO or ASTM as referenced in the MAG 700 Series.

D. Testing Facility. The Design-Builder will select a pre-qualified independent testing laboratory and will pay for initial District acceptance testing.

1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the Design-Builder. Contractor's Contingency cannot be utilized for the cost of re-testing.

2. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

E. Cooperation. The Design-Builder will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide the laboratory's employees or agents access to the Work at all times.

F. At-source Approval. At the option of the District, materials may be approved at the source of supply before delivery.

G. Code Compliance. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority shall be the responsibility of and shall be paid by the Design-Builder, unless otherwise provided in the Contract Documents.

H. Responsibility. Design-Builder's quality control testing and inspections shall be the sole responsibility of the Design-Builder and shall be paid solely by the Design-Builder.

4.11 Trade Names and Substitutions.

A. Substitutions. Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number may be permitted, unless indicated that no substitutions are permitted, and if permitted are subject to the following:

1. The substitution shall be submitted by Design-Builder in writing to the District, including sufficient detail to properly analyze the request.

2. The Design-Builder and the Project Designer 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.

3. The submittal shall outline any required changes in the Contract Documents to adapt the design to the proposed substitution.

4. 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 request for adjustment in the Contract Time created by the substitution.

B. Samples; Additional Information. The Design-Builder, if requested by the District, shall submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

C. District Determination. The District will make the final decision and will notify the Design-Builder in writing as to whether the substitution has been accepted or rejected.

D. Presumed Rejection. If the District does not respond in a timely manner, the Design-Builder shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

4.12 Project Record Documents.

A. Redline Prints. During the construction period, the Design-Builder shall maintain at the Site a set of redline, blue-line or blackline prints of the Construction Documents and Shop Drawings for Project Record Document purposes. The Design-Builder will certify that these documents are up to date when it submits its monthly pay application. The Design-Builder shall also:

1. Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements that would be difficult to identify or measure and record later. Items required to be marked include, but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings.
- Depths of foundations below first floor.
- Locations and depths of underground utilities.
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order or Change Directive.
- Details not on original Contract Documents.
- Similar deviations, variations and modifications.

2. Mark completely and accurately Project Record Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents.

3. Electronically mark Project Record Document sets in red.

4. Note Change Order or Change Directive numbers, as required to identify the source of the change to the Construction Documents.

5. As a condition of Substantial Completion, submit Project Record Documents and Shop Drawings to the District Project Manager for review and comment.

B. Corrections. Upon receipt of the reviewed Project Record Documents from the District, the Design-Builder shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the District within 14 Days:

1. A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with District CADD technology. The Design-Builder shall cause the Project Designers to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

2. The original copy of the Project Record Documents (including all redline mark-ups).

4.13 Project Safety. Design-Builder 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 or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

A. Responsibility. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

B. Safety Representative. Design-Builder shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

C. Daily Inspections. The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable. Design-Builder shall provide the District copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.

D. Legal Requirements. Design-Builder and Subcontractors shall comply with Applicable Law relating to safety, as well as any District-specific safety requirements set forth in the Contract Documents, provided that such District-specific requirements do not violate Applicable Law. If Design-Builder believes a District-specific requirement violates Applicable Law, the Design-Builder shall notify the District of such violation within 24 hours of discovery.

E. Reporting. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to District's Project Manager and, to the extent mandated by Applicable Law, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

F. Subcontractor Responsibility. Design-Builder's responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (1) complying with Applicable Law, including those related to health and safety matters, and (2) 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.

4.14 Substantial Completion. When the Design-Builder considers that the Work has reached Substantial Completion, it shall submit a request to the District's Project Manager for a certificate of Substantial Completion. Substantial Completion must occur not later than the date set forth in the applicable GMP Amendment, subject to modification by changes in the Contract Time according to Article 6 below. A prerequisite for Substantial Completion, over and above the extent of construction completion required, is receipt by the District of acceptable documentation that Design-Builder has successfully tested and demonstrated all systems for their intended uses. The District shall determine when the Project and the Design-Builder's Work is substantially complete. The Substantial Completion date shall be confirmed by a Certificate of Substantial Completion signed by the District and Design-Builder. The Certificate of Substantial Completion shall state the respective responsibilities of the District and the Design-Builder for security, maintenance and damage to the work and insurance. The Certificate of Substantial Completion shall also include the Punch List, as created by the Design-Builder and modified by the Project Designers in consultation with the District, and establish the time for completion and correction of all Punch List items. The Design-Builder shall

proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents. If the District and the Design-Builder cannot agree as to the appropriate Substantial Completion date, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in Article 13 below. Notwithstanding such disagreement, the Design-Builder shall diligently proceed with completion of the Punch List items. Warranties required by the Contract Documents shall commence on the Substantial Completion date or designated portion thereof unless otherwise provided in the Contract Documents.

4.15 Final Completion. The District shall determine when the Project and the Design-Builder's Work has reached Final Completion. Final Completion must occur not later than 60 Days after the Substantial Completion date, subject to modification by changes in the Contract Time in Article 6 below. Final Completion shall be achieved only upon the District's written acceptance of (A) the construction, (B) all testing, (C) demonstration by the Design-Builder that the Work functions as required by the Contract Documents and meets all Contract Document requirements, (D) resolution of all outstanding system deficiencies and Punch List items, if any, (E) delivery of all as-built documentation, drawings, completed Project Record Documents (with revisions made after Substantial Completion), annotated submittals and design document deliverables, (F) submittal, acceptance, and delivery of the 100% complete O&M manuals, (G) delivery of warranties, inspection certificates, bonds and all other required documents, (H) all pre-requisites for final payment and (I) submittal of Design-Builder's request for final payment and acceptance enclosing all required documentation. Upon Final Completion the District shall issue a Certificate of Final Completion to the Design-Builder on behalf of the District. Following receipt of payment from the District, the Design-Builder shall make all payments due to the Subcontractors.

4.16 Correction of Defective Work.

A. During the Work. During the Work, Design-Builder shall take meaningful steps to commence correction of such nonconforming Work as notified by the District. 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.

B. During Warranty Period. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents within the warranty period described in Subsection 5.6(A) below, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by the District, shall not constitute acceptance of Work not in accordance with the Contract Documents.

C. Commencement by Design-Builder. Design-Builder shall take meaningful steps to commence correction of nonconforming Work subject to Subsections 4.16(A) and (B) above within seven Days of receipt of written notice from the District. This includes correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven-Day period, the District, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide Design-Builder with written notice that the District will commence correction of such nonconforming Work with its own forces. If the District corrects such nonconforming Work with its own forces, the GMP will be adjusted to deduct the cost to the District. If the District performs corrective Work after final payment, Design-Builder shall be responsible for all reasonable costs incurred by the District in performing such correction.

D. Emergencies. In the event nonconforming Work creates an emergency requiring an immediate response, the Design-Builder will respond and initiate corrections within 24 hours.

E. No Effect on Limitations Period. The two-year period referenced in Subsection 5.6(A) below applies only to Design-Builder's obligation to correct nonconforming Work as provided in this Section and is not intended to constitute a period of limitations for any other rights or remedies the District may have regarding Design-Builder's obligations under the Contract Documents or as may be allowed by law.

4.17 Additional Services. Any Additional Services must be authorized in advance by the District in writing; the

Design-Builder shall furnish or obtain from others such authorized services. The Design-Builder shall be paid for these Additional Services by the District as herein provided to the extent they exceed reasonably inferable obligations of the Design-Builder under this Agreement. Potential Additional Services include:

- A. Planning. Providing additional planning surveys or alternative site evaluations other than as required or reasonably inferred in this Article 4.
- B. Equipment/Outside of Project Design. Providing design services relative to systems and equipment that are not intended to be constructed as part of the Project, other than general planning and master planning for future work as indicated by the District's Project program. Providing design and engineering of any work outside the Site if said work is not expressly identified and included in the Scope.
- C. Major Document Revisions/Additional Documents. Making major revisions in the construction documents, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the District or are due to causes beyond the control and without the fault and negligence or partial fault or negligence of the Design-Builder or its consultants or agents. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the construction phase, other than as required or reasonably inferred in this Article 4. Making revisions to Construction Documents after the District has approved them when revisions are due to causes beyond the control and not the fault or partial fault of the Design-Builder.
- D. Advanced Soils Analysis. Providing additional soils sampling, classification, and analysis other than as required or reasonably inferred in the foregoing sections of Article 4. Design-Builder is entitled to rely upon the soils analysis and recommendations as provided by a geotechnical consultant; however, Design-Builder is responsible for interpretation of such data for the purpose of establishing the means and methods of construction and such interpretation shall not be considered Additional Services during the design phase or the construction phase.
- E. Expert Testimony. Preparing to serve or serving as an expert witness for the District in connection with any public hearing, arbitration proceeding, or legal proceeding wherein the Design-Builder or Subcontractor of the Design-Builder is not a party or allegedly at fault; provided, however, preparing to serve or serving as a fact witness for the District or rendering testimony necessary to secure governmental approval for the Project shall not constitute an additional service.
- F. Survey. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required or reasonably inferred in this Article 4.
- G. Additional Travel. Providing Additional Services and costs necessitated by out-of-town travel required of and approved in writing by the District other than visits to the Project and other than for travel required to accomplish the Work.
- H. Unrelated Services. Providing any other services not otherwise included in this Agreement, not reasonably inferred by this Agreement or not customarily furnished in accordance with generally accepted contractual practices consistent with the term of this Agreement.
- I. Replacement Work. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Design-Builder's action or inaction during construction, or furnishing services required in connection with the replacement of such work.
- J. Special Studies. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, other than as required or reasonably inferred in this Article 4.
- K. O&M Analysis. Providing analyses of operating and maintenance costs other than as required for value analysis in Subsection 2.2(E) above, unless provided for in the Scope.

L. Assisting with District-Performed Work. Designing, and providing other services supporting the procurement of materials to be obtained, or work, if any, to be performed by the District, that are not a part of the Work.

ARTICLE 5 POST-CONSTRUCTION PHASE

5.1 Final Accounting and Close-out. At the conclusion of the Project, the Design-Builder shall prepare final Project accounting and close-out reports.

5.2 Occupancy Plans. The Design-Builder shall prepare and distribute reports as necessary associated with the occupancy plan.

5.3 Certificates. The Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to the District.

5.4 Manufacturer Manuals and Warranties. The Design-Builder shall require the Subcontractors to provide manufacturers' operations and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Prior to Final Completion of the Project, the Design-Builder shall compile such manuals, warranties and guarantees, bind same in an organized manner and deliver the bound materials to the District; the District shall not be required to issue the final payment to the Design-Builder pursuant to Section 9.6 below until after the compiled manuals, warranties and guarantees have been delivered to the District. At the discretion of the District, electronic records may be substituted for the bound materials required in this section.

5.5 Inspection and Testing. With the assistance of the District's maintenance personnel, the Design-Builder shall direct the inspection of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

5.6 Warranties.

A. Warranty for the Work. Design-Builder or its assignee shall give to the District a two-year warranty against deficiencies in material and workmanship for all Work on the Project or other such warranty as required by the District Engineer, which warranty shall begin on the Substantial Completion date. Any material deficiencies in material or workmanship identified by District staff during the two-year warranty period shall be brought to the attention of the Design-Builder and its assignee that provided the warranty, which both shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the District Engineer. Continuing material deficiencies in a particular portion of the Work shall be sufficient grounds for the District to require (1) an extension of the warranty for an additional two-year period and (2) the proper repair of or the removal and reinstallation of, that portion of the Work that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Design-Builder agrees to repair any damage to the Work caused by construction activities on the Site. Nothing contained herein shall prevent the District or the Design-Builder from seeking recourse against any other third party for damage to the Work caused by such third party.

B. New Materials. The Design-Builder warrants that all materials and equipment furnished under construction phase(s) of this Agreement are (1) new unless otherwise specified and approved by the District, (2) of good quality, (3) in conformance with the Contract Documents and (4) free from defective workmanship, defective materials and Hazardous Materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion if the warranted items are fully installed, operational and available for use and if not, at such time after the date of Substantial Completion as they are fully installed, operational and available for use.

C. Actions by Others. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be responsible and/or liable.

D. No Limitation on Other Warranties. Nothing in this warranty is intended to limit any manufacturer's warranty that provides District with greater warranty rights than set forth in this Section or the Contract Documents.

E. No Limitation on Legal Remedies. Nothing in this warranty is intended to limit any other remedy at law that may be available to the District.

ARTICLE 6 CONTRACT TIME

6.1 Progress and Completion. The District and the Design-Builder agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are of the essence of this Agreement.

6.2 Commencement of the Work. The Work, except for the (A) environmental investigation services set forth in Section 2.1 above, (B) review of Construction Documents and design remedies services set forth in Section 2.2 above, and (C) Pre-Construction Phase General Services set forth in Section 2.3 above, shall commence on the Notice to Proceed date of the applicable GMP Amendment, and shall proceed in general accordance with the Schedule for the Work set forth therein. Each GMP Amendment shall establish a separate Notice to Proceed date, Substantial Completion date and portion of the Contract Time applicable to that GMP. The Substantial Completion dates may be sequential or may run consecutively.

6.3 Prosecution of the Work. The Design-Builder shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Master Schedule. If the delay is an Inexcusable Delay, as defined below, the Design-Builder shall prepare a recovery schedule for the District's review and approval, showing how the Design-Builder will compensate for the delays and achieve Substantial Completion by the date shown on the Master Schedule. If the Design-Builder is unable to demonstrate how it will overcome Inexcusable Delays, the District may order the Design-Builder to employ such extraordinary measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the District shall either (A) authorize an equitable extension in the Master Schedule to account for such delay, and equitably adjust the GMP on account of such delay or (B) request that the Design-Builder prepare a recovery schedule showing how (if possible) the Design-Builder can achieve Substantial Completion by the date shown on the Master Schedule, and equitably adjust the applicable GMP in accordance with the Change Order provisions of this Agreement related to any extraordinary activities required of the Design-Builder on account of such recovery schedule.

6.4 Critical Path Activities. To the extent the Design-Builder completes activities on the Critical Path earlier than scheduled, the savings in time on account thereof shall belong solely to the Design-Builder.

6.5 Construction Activities. At such time as the Construction Documents, or any portion thereof, are complete, the Design-Builder shall submit a revised Master Schedule to the District for incorporation into the Contract Documents, which will expand the Master Schedule approved to date, but which will not, in and of itself, change the Substantial Completion date for the Project. This revised Master Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities, the sequence of the Work and all significant activities.

6.6 Extensions of Time.

A. Limited to Excusable Delay. An extension in the scheduled Substantial Completion date will only be granted in the event of Excusable Delays affecting Work activities on the Critical Path. The Design-Builder shall be entitled to general condition costs and extra costs related to the Excusable Delay for idle labor, equipment inefficiency and lost productivity of the performance of the Work; however, the Design-Builder must submit evidence reasonably satisfactory to the District substantiating such costs. Such adjustment to the contract sum and Substantial Completion date shall be issued Change Order as an amendment to this Agreement.

B. Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting activities on the Critical Path, such shall constitute an “Excusable Delay” (to the extent not set forth below, a delay will be considered an “Inexcusable Delay”):

1. Delays resulting from Force Majeure events. The term “*Force Majeure*” means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, Force Majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions-intervention-acts or failures or refusals to act by government authority, and other similar occurrences beyond the control of the Party declaring Force Majeure which such Party is unable to prevent by exercising reasonable diligence. The Force Majeure shall be deemed to commence when the Party declaring Force Majeure notifies the other Party, in accordance with Subsection 14.6, of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the Party from resuming performance in accordance with this Agreement. Force Majeure shall not include: (a) late delivery of equipment or materials caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences, or (b) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Subsection 6.6(B). Any delay or failure in performance by either Party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other Party in writing. The time of Substantial Completion or Final Completion shall be extended by written amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed Party from performing in accordance with this Agreement.

2. Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Design-Builder in preparing the Master Schedule, including, without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned or not properly identified utility lines and water conditions.

3. Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by or on behalf of the Design-Builder.

4. Delays resulting from changes in Applicable Law occurring after the date of execution of this Agreement.

5. Delays occurring due to the acts or omissions of the District and those within the control of the District.

6. Delays occurring due to the acts or omissions of a utility, so long as Design-Builder has coordinated with the utility causing the delay and the delay occurs despite reasonable steps taken by Design-Builder to avoid the delay.

7. Delays resulting from weather conditions that make it unreasonable to perform the Work in accordance with the Master Schedule.

C. Process for Requesting Extension of Time. In order to obtain an extension of time due to an Excusable Delay, the Design-Builder must comply with the following requirements: The Design-Builder shall notify the District of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Design-Builder becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Design-Builder expects to be delayed. After the cessation of the Excusable Delay, the Design-Builder shall notify the District of the number of Days the Design-Builder believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the District, the request for an extension of time contained in the resulting Change Order proposal this Agreement, as applicable, shall be deemed sufficient for purposes of this Subsection.

D. District Determination. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then-current status of Excusable Delays and Inexcusable Delays, the District will provide the Design-Builder with written notice of District's determination of the number of Days of Excusable Delay and/or Inexcusable Delay within 10 Days after receipt by the District of the Design-Builder's written request for such determination. The Design-Builder shall not, however, deem an issuance by the District of such a determination to be a concurrence with any matters set forth in the Design-Builder's request. The Design-Builder may invoke the dispute resolution procedures set forth in Article 13 below with respect to such determination.

6.7 Concurrent Delays. To the extent the Design-Builder may be entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Design-Builder or by an Inexcusable Delay, the Design-Builder shall not be entitled to any additional costs for the period of such concurrency.

6.8 Weather Delays. The Design-Builder shall include and clearly identify an appropriate number of Days of weather-related delays within (A) the aggregate Master Schedule for the Work and within the portions of the Master Schedule submitted with each GMP Proposal relating to any phase of the Project and (B) each GMP Amendment. If the Design-Builder experiences additional weather-related delays beyond the number of Days set forth in the Master Schedule and the GMP Amendment, the Design-Builder shall be entitled to commensurate extension of time and reimbursement of costs associated with such delay; provided such requests for extensions of time are submitted and approved according to the process set forth in Section 6.6 above. If the Design-Builder fails to include an appropriate number of Days of weather-related delays within the applicable GMP Proposal for any portion of the Project, the Design-Builder shall not be eligible for any extension of time or reimbursement of costs related to otherwise Excusable Delays relating to weather for the applicable GMP Proposal.

6.9 Liquidated Damages.

A. Established. The Design-Builder and the District acknowledge that in the event that the Design-Builder fails to achieve Substantial Completion or Final Completion of the Project by the dates established therefore in the applicable GMP Amendment, as adjusted, the District will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the District would incur as a result of late Substantial Completion or Final Completion of the Project. Such liquidated damages shall be the sole and exclusive remedy of the District for late completion of the Project, and the District hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

B. Amount of Liquidated Damages.

1. If the Design-Builder fails to achieve Substantial Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Substantial Completion date set forth in the applicable GMP Proposal, as adjusted, for any reason other than Excusable Delays, the Design-Builder shall pay to the District liquidated damages in the amount per Day as determined by the Maricopa Association of Governments specifications existing on the date this Agreement is approved by the District Council (the "MAG Specifications") for each Day Substantial Completion is delayed beyond the Substantial Completion date set forth in the applicable GMP Amendment.

2. If the Design-Builder fails to achieve Final Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Final Completion date, as adjusted, for any reason other than Excusable Delays, the Design-Builder shall pay to the District liquidated damages in the amount per Day as determined by MAG Specifications for each Day Final Completion is delayed beyond the Final Completion date established according to the applicable GMP

Amendment.

3. In no case may the amount of liquidated damages due under this Subsection 6.9(B) for any single Day of delay exceed the highest amount, as determined according to MAG Specifications, that would be charged for any single Inexcusable Delay existing on such Day.

4. Payment of liquidated damages is to be made contemporaneously with any required payment to the Design-Builder, and such payments may be offset against each other.

ARTICLE 7 CONTRACT PRICE

7.1 Contract Price. Total compensation under this Agreement (the "Contract Price") includes the sum of approved pre-construction compensation, GMP structure, adjustments, and contingencies, which shall be governed exclusively by the applicable prior section(s) of this Agreement and approved GMP Amendment(s), if any.

7.2 Adjustment in the Contract Price. Adjustment to the respective components of the Contract Price shall be made in accordance with Article 8.

7.3 Payment Data. The Design-Builder shall submit to the District, upon request, all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks in order for the District to accurately calculate the Contract Price at the completion of the Work. The requirements of this Section shall be included in all contracts between the Design-Builder and its Subcontractors and Consultants. The District may exercise its rights under this Section as often as reasonably necessary in the District's sole judgment to ensure the District has a complete and accurate understanding of all Project costs and ability to calculate the total Contract Price upon completion of the Work.

ARTICLE 8 CHANGES IN THE WORK

8.1 Prescribed Methods for Changes. Changes in Design-Builder's Construction Services shall only be made by a written Change Directive or Change Order to this Agreement signed by the District and the Design-Builder. Changes involving (A) a change in the sum for the Pre-Construction Services set forth above or (B) a change in any GMP, must be approved by written Amendment to the District and the Design-Builder. The Design-Builder shall not (A) perform any additional Services or (B) eliminate any duties included in the Services until a written Amendment or Change Order has been properly approved and executed by both Parties. The Design-Builder shall proceed to perform the Services required only after receiving written notice from the District directing the Design-Builder to proceed.

8.2 Change Control System. The Design-Builder shall establish and implement a change control system. All proposed changes shall first be described in detail in writing by the requesting party. The requesting party shall submit detailed information to the Design-Builder for evaluation concerning the costs and time adjustments, if any, necessary to perform the proposed changed work. The Contractor shall discuss the proposed change with the appropriate Subcontractor and endeavor to determine the Subcontractor's basis for the cost to perform the work and the effect, if any, on the applicable GMP. The Design-Builder shall make a recommendation to the District pursuant to this Article 8 prior to the District's acceptance of all change requests.

8.3 Change Directives; Change Orders; GMP Adjustments. Changes in the Work that are within the general scope of this Agreement may be accomplished by Change Directive without invalidating this Agreement; provided, however, that any change in the Work that will result in an increase to a GMP or extension of the Substantial Completion date shall be pursuant to an approved Change Order to this Agreement clearly delineating the amounts attributable to compensation for the General Conditions Costs, the Construction Fee and other Cost of the Work. Costs for changes to be submitted in format as supplied by the District's Project Manager.

8.4 Determination of Cost. An increase or decrease in a GMP resulting from a change in the Work shall be determined by one or more of the following methods:

- A. Unit prices set forth in this Agreement or as subsequently agreed.
- B. Mutually accepted, itemized lump sum.
- C. Costs determined as defined in Article 3 above.
- D. If an increase or decrease cannot be agreed to as set forth in Subsections 8.4(A) and (B) and the District issues a written order for the Design-Builder to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

8.5 No Obligation to Perform. The Design-Builder shall not be obligated to perform changed Work until a Change Directive or a Change Order to this Agreement, as applicable, has been executed by the District and the Design-Builder, except as provided in Subsection 8.4(D) above.

8.6 Adjustment of Unit Prices. If a proposed change alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the District or the Design-Builder, the unit prices shall be equitably adjusted and, if the result is an increase to a GMP, an amendment to this Agreement shall be executed.

8.7 Unknown Conditions. If, in the performance of the Work, the Design-Builder or its Subcontractor finds latent, concealed or subsurface physical conditions that (A) differ from the conditions the Design-Builder or its Subcontractor should have reasonably anticipated, (B) differ substantially from available soils reports or (C) differ substantially and materially from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in the Project area), then the applicable GMP compensation and/or the Substantial Completion date may be equitably adjusted only if the Design-Builder notifies the District within seven Days after the conditions are first observed in accordance with Article 6 above.

8.8 Emergencies. In any emergency affecting the safety of persons and/or property, the Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in a GMP, compensation for Pre-construction Services, the Contract Price and/or extension of the Substantial Completion date on account of emergency work shall be determined as provided in this Agreement.

ARTICLE 9 PAYMENT

9.1 Progress Payments.

A. Submittal Process. On or before the 15th day of each month after the construction phase has commenced, the Design-Builder shall submit to the District an "Application for Payment" consisting of the Cost of the Work performed up to the end of the prior month, including the cost of material stored on the Site or at other locations approved by the District, along with a proportionate share of the Construction Fee. For the purpose of audit, prior to submission of the next Application for Payment, the Design-Builder shall make available at the request of the District a statement accounting for the disbursement of funds received under the previous Application. The form and extent of such statement shall be as agreed upon between the District and Design-Builder.

B. District's Payment. Within seven (7) Days after approval of each monthly Application for Payment, the District shall pay directly to the Design-Builder the appropriate amount for which Application for Payment is made, less amounts (1) previously paid by the District, (2) sufficient to pay expenses the District reasonably expects to incur in correcting deficiencies that are set forth in writing and provided to the Design-Builder and (3) any retainage as set forth in Section 9.2 below.

C. No Liens. The Design-Builder warrants and guarantees that the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to

the District upon receipt of such payment by the Design-Builder free and clear of all liens, claims, security interests or encumbrances.

D. Non-Conforming Work. The District's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of this Agreement or the Contract Documents.

E. Unfinished Items. Upon Substantial Completion of the Work, the District shall pay the Design-Builder the unpaid balance of the Cost of the Work, General Conditions Costs and the Construction Fee, less a sum equal to the Design-Builder's estimated cost of completing any unfinished items as agreed to between the District and the Design-Builder as to extent and time for completion. The District thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

9.2 Retainage.

A. Exceptions to Retainage Requirement. No retainage shall be withheld with respect to gross receipts tax and premiums for bonds and insurance.

B. Amount Retained. With respect to the Work, the District shall retain 10% of each progress payment made to Design-Builder until the work is 50% complete.

1. Any securities submitted by Design-Builder in lieu of retainage as may be allowed by law, shall be deposited in an escrow account by the District. The District shall be listed as payee or multiple payee with Design-Builder on all such securities.

2. When the Work is 50% completed, one-half of the amount retained including any securities substituted pursuant to Subsection 9.2(B)(1) shall be paid to the Design-Builder upon the Design-Builder's request, provided the Design-Builder is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After the construction Work is 50% completed, no more than 5% of the amount of any subsequent progress payments made under the Contract Documents may be retained, provided the Design-Builder is making satisfactory progress on the Project. If, at any time, the District determines satisfactory progress is not being made, 10% retention shall be reinstated for all progress payments made under the Contract Documents after the determination.

3. Retention is to be paid to the Design-Builder within sixty (60) days after the District's determination of Final Completion of the Project.

9.3 Payment for On-site and Off-site Stored Materials. Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Design-Builder furnishing evidence to the District that (A) title to the materials and equipment will pass to the District upon payment therefore, (B) the materials and equipment are adequately insured and (C) such other matters as the District may reasonably request in order to protect its interests.

9.4 Title to Construction Work. The Design-Builder warrants that title to all Work covered by an Application for Payment shall pass to the District no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the District shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.5 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the District may offset against any money due to the Design-Builder any amounts Design-Builder owes to the District for damages resulting

from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The District may offset against any money due to the Design-Builder any amounts Design-Builder owes to the District for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

9.6 Final Payment.

A. Fully Completed Work. Final payment, consisting of the unpaid balance of (1) the Cost of the Work, (2) compensation for Pre-Construction Services and (3) the Guaranteed Maximum Price, as amended, i.e., the total Construction Fee, shall be due and payable when the Work is fully completed and accepted by the District. Before issuance of final payment, the District may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

B. Waiver of Claims. In making final payment, the District waives all claims against the Design-Builder except for:

1. Outstanding liens.
2. Improper workmanship or defective materials.
3. Work not in conformance with the Contract Documents or work not completed.
4. Terms of any special warranties required by the Contract Documents.
5. Delivery to District of all warranties, operation and maintenance manuals, record drawings and other documents as required by the Contract Documents.
6. Right to audit Design-Builder records for a period of six (6) years.
7. Claims previously made in writing that remain unsettled.

C. Acceptance as Waiver. Acceptance of final payment by the Design-Builder shall constitute a waiver of affirmative claims by the Design-Builder against the District, its employees, elected officials and agents, except those previously made in writing and identified as unsettled at the time of final payment.

9.7 Payments to Subcontractors.

A. The Design-Builder shall pay its Subcontractors or suppliers within seven Days of receipt of each progress payment from the District and as required by Arizona law. The Design-Builder shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the District with each progress payment. In addition, any reduction of retention by the District to the Design-Builder shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. The Design-Builder shall pay Subcontractors or suppliers the reduced retention within 14 Days of the payment of the reduction of the retention to the Design-Builder. No Contract between the Design-Builder and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein or by Arizona law.

B. Failure to Timely Pay. The Design-Builder agrees that if it fails to make payments in accordance with these provisions, the District may take any one or more of the following actions:

1. Hold the Design-Builder in default under this Agreement.
2. Withhold future payments, including retention, until proper payment has been made to

Subcontractors or suppliers in accordance with these provisions.

3. Reject all future offers to perform work for the District from the Design-Builder for a period not to exceed one year from Substantial Completion date of this Project.

4. Terminate this Agreement.

5. Make a claim against the bonds required pursuant to Article 11.

C. No Waiver. Should the District fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

D. Inclusion in Subcontracts. The Design-Builder shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

9.8 Record Keeping and Finance Controls.

A. Retention Requirement. Records of the Design-Builder's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the District and the Design-Builder shall be kept on a generally recognized accounting basis and shall be available for three years after Final Completion of the Project.

B. Audit Rights. The District, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Design-Builder's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

C. Pricing Data Inaccuracies. The District reserves the right to decrease payments made on this Agreement, in an amount determined by the District in its sole discretion, if, upon audit of the Design-Builder's records, the audit discloses the Design-Builder has provided false, misleading, or inaccurate cost and pricing data.

D. Inclusion in Subcontracts. The Design-Builder shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the District, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

E. District Remedies. The District reserves the right to decrease payments made under this Agreement, in an amount determined by the District in its sole discretion, if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the District to audit their records to verify the accuracy and appropriateness of pricing data.

ARTICLE 10 INSURANCE AND INDEMNITY

10.1 Insurance Representations and Requirements.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of the Design-Builder, the Design-Builder shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to A.R.S. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the District. Failure to maintain insurance as specified herein may result in termination of this Agreement at the District's option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, the District does not represent that coverage and limits will be adequate to protect the Design-Builder. The District reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Design-Builder from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the District, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.
4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the District, unless specified otherwise in this Agreement.
5. Primary Insurance. Design-Builder's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the District as an Additional Insured.
6. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
7. Waiver. All policies, excluding Professional Liability but including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the District, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Design-Builder. Design-Builder shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
8. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the District. Design-Builder shall be solely responsible for any such deductible or self-insured retention amount.
9. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Design-Builder shall execute written agreements with its subcontractors containing the indemnification provisions set forth below and insurance requirements set forth herein protecting the District and Design-Builder. Design-Builder shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
10. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Design-Builder will provide the District with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Design-Builder's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The District shall reasonably rely upon the certificates of

insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Design-Builder's responsibility to forward renewal certificates and declaration page(s) to the District 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- a. The District, its agents, representatives, officers, directors, officials and employees are Additional Insureds.
- b. Design-Builder's insurance shall be primary insurance with respect to performance of this Agreement.
- c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against District, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Design-Builder under this Agreement.
- d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11. Endorsements. Design-Builder shall provide the District with the necessary endorsements to ensure District is provided the insurance coverage set forth in this Article.

12. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the District.

B. Required Insurance Coverage.

1. Commercial General Liability. Design-Builder shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 12 19 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the District, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured, which shall read "Who is an Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of 'your work' for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance. Design Builder shall maintain coverage through Final Completion for Design Builder and all Subcontractors engaged in the performance of services under this Agreement. Design Builder shall maintain coverage through the full warranty period specified herein for Design Builder and all Subcontractors that perform services at the project after Final Completion, during the full warranty period.

2. Vehicle Liability. Design-Builder shall maintain Business Automobile Liability insurance

with a limit of \$1,000,000 each occurrence on Design-Builder's owned, hired and non-owned vehicles assigned to or used in the performance of the Design-Builder's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 10 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the District, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured. If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance. Design Builder shall maintain coverage through Final Completion for Design Builder and all Subcontractors engaged in the performance of services under this Agreement. Design Builder shall maintain coverage through the full warranty period specified herein for Design Builder and all Subcontractors that perform services at the project after Final Completion, during the full warranty period

3. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Design-Builder engages in any professional services or work in any way related to performing the work under this Agreement, the Design-Builder shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Design-Builder, or anyone employed by the Design-Builder, or anyone for whose negligent acts, mistakes, errors and omissions the Design-Builder is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Design-Builder warrants that any retroactive date under the policy shall be no later than the effective date of this Contract, and that either continuous coverage will maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time of Final Completion.

4. Workers' Compensation Insurance. Design-Builder shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Design-Builder's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. Builder's Risk Insurance. Unless expressly waived by the District in a written amendment to this Agreement, the Design-Builder shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss until written notice of Substantial Completion from the District. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss.

Coverage shall include applicable Design Builder costs such as Contractor and Design Professional Services fees required due to an insured loss. Inclusion of extra expenses and/or expediting expenses shall be included within the coverage with sub limits commensurate with what is available in the marketplace.

This insurance shall not cover any contractors' equipment, including, but not limited to machinery, tools, equipment, or other personal property owned, rented, or used by Design Builder or Subcontractors in the performance of their work on the Work, which will not become a part of the Work to be accepted by the Owner.

Design Builder shall be responsible for the deductible on each loss and shall retain responsibility for any loss not covered by the Builder's Risk policy.

The insurance shall include as named insureds the District, the Design-Builder, and the Design-Builder's Subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Design-Builder shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

6. **Umbrella/Excess Liability.** Design-Builder and Subcontractor shall maintain Umbrella and Excess Liability insurance with a limit of not less than as shown in the below table per occurrence combined limit Bodily Injury and Property Damage, that “follows form” and applies in excess of the Commercial General Liability, Automobile Liability, and Employer’s Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement. Design Builder shall maintain coverage through Final Completion for Design Builder and all Subcontractors engaged in the performance of services under this Agreement. Design Builder shall maintain coverage through the full warranty period specified herein for Design Builder and all Subcontractors that perform services at the project after Final Completion, during the full warranty period.

Total Project Budget	Required Excess/Umbrella Limits
\$0 - \$2M	\$0
Greater than \$2M - \$10M	\$2M per occurrence, \$2M aggregate
Greater than \$10M - \$25M	\$5M per occurrence, \$5M aggregate
Greater than \$25M - \$100M	\$10M per occurrence, \$10M aggregate
Greater than \$100M	\$25M per occurrence, \$25M aggregate

C. **Cancellation and Expiration Notice.** Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days’ prior written notice to the District. Each certificate for each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage by endorsement to limits lower than those required by this Agreement, except after prior written consent from the District. Notice will be sent as required.

10.2 **Indemnity.** To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless the District and each District member, officer, director, employee or agent thereof (the District and any such person shall be deemed an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, fines, penalties, judgments, costs and expenses (including, but not limited to, reasonable consultant fees, court costs, attorney fees and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively “Claims”), to the extent such Claims (or actions in respect thereof) are caused by or based upon the negligence, recklessness or intentional wrongful conduct of the Design-Builder, Design-Builder’s officers, employees, agents, or any tier of sub-contractor or person attributable to Design-Builder in the performance of this Agreement. The indemnification obligations under this Section are subject to the provisions of A.R.S. § 34-226. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this Section.

10.3 **Indemnification – Patent, Copyright and Trademark.** To the fullest extent permitted by law, Design-Builder agrees to defend, indemnify, save and hold harmless the District, District’s officials, officers, agents, and employees (referred to as “Indemnatee”) individually and collectively at Design-Builder’s own expense, for, from and against any liability, including any and all expenses, losses, royalties, profits, judgments, damages, including all legal costs and expenses, court costs and attorney fees, for infringement of any patent, copyright, trademark and other proprietary rights of any third parties arising out of, related to or resulting from this Agreement or use by the District of materials furnished or services performed under this Agreement. The District may be represented by, and actively participate through, District’s own counsel in such suit or proceedings, if it is so desires.

10.4 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this Agreement and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this Agreement shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

ARTICLE 11 BONDS

11.1 **Performance Bond.** After the District and the Design-Builder have agreed to a GMP but prior to commencing

the Construction Services attributable to such GMP, the Design-Builder shall be required to furnish the District with an irrevocable security binding the Design-Builder to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to the Construction Services, payable to the District and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or any other related services. Performance security shall be in the form of a performance bond, certified check or cashier's check. If the Design-Builder fails to execute the security document as required, the Design-Builder may be found in material default of this Agreement, permitting the District to terminate this Agreement for cause as set forth in Article 12 below. In case of default the District reserves all rights. All performance bonds shall be executed on the form attached hereto as Exhibit K, duly executed by the Design-Builder as Principal and having as Surety thereon a Surety company approved by the District and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.2 Payment Bond. After the District and the Design-Builder have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Design-Builder shall be required to furnish the District with an irrevocable security for the protection of all claimants supplying labor or materials to the Design-Builder or any Subcontractor in the prosecution of the construction and not for the protection of persons providing any design services, preconstruction services, finance services, maintenance services, operations services or other related services related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to the Construction Services and be payable to the District. Payment security shall be in the form of a payment bond, certified check or cashier's check. If the Design-Builder fails to execute the security document as required, the Design-Builder may be found in material default of this Agreement, permitting the District to terminate this Agreement for cause as set forth in Section 12 below. All payment bonds shall be executed on the form attached hereto as Exhibit L, duly executed by the Design-Builder as Principal and having as Surety thereon a Surety company approved by the District and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

ARTICLE 12 TERMINATION AND SUSPENSION

12.1 Termination by the Design-Builder.

A. Procedure. Upon 30 Days' written notice to the District of one of the reasons set forth below, and if the District fails to cure or initiate reasonable action to cure within 30 Days of receipt of said notice, the Design-Builder may terminate this Agreement for any of the following:

1. If the Work has been stopped for a 60-Day period:
 - a. Under court order or order of other governmental authorities having jurisdiction;
or
 - b. As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Design-Builder, materials are not available.
2. If the Work is suspended by the District for more than 60 Days.
3. If the District materially delays the Design-Builder in the performance of the Work.
4. If the District otherwise materially breaches this Agreement.

B. Payment to Design-Builder. Upon termination by the Design-Builder in accordance with Subsection 12.1(A) above, the Design-Builder shall be entitled to recover from the District payment for all Work

completed to the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead, extended general conditions and profit on the Work performed. The District may subtract reasonable estimates of costs for deficient work from the payments noted above.

12.2 Termination by the District for Cause.

A. Design-Builder Default. If the Design-Builder refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for 15 Days after the Design-Builder receives written notice of such nonperformance or violation from the District, then the District may, without prejudice to any right or remedy otherwise available to the District, terminate this Agreement.

B. Design-Builder Insolvency. Upon the appointment of a receiver for the Design-Builder, or if the Design-Builder makes a general assignment for the benefit of creditors, the District may terminate this Agreement, without prejudice to any right or remedy otherwise available to the District, upon giving three Days' written notice to the Design-Builder. If an order for relief is entered under the bankruptcy code with respect to the Design-Builder, the District may terminate this Agreement by giving three Days' written notice to the Design-Builder unless the Design-Builder or the trustee does all of the following:

1. Promptly cures all breaches within such three-Day period.
2. Provides adequate assurances of future performance.
3. Compensates the District for actual pecuniary loss resulting from such breach(es).
4. Assumes the obligations of the Design-Builder within the established time limits.

C. Failure to Agree on a GMP. If the District and the Design-Builder fail, after good faith efforts, to agree upon a GMP, this Agreement may be terminated upon 15 Days' notice from either Party to the other. In the event of a termination for failure to agree on a GMP, the Design-Builder's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Design-Builder shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination under this Subsection.

12.3 Termination by the District for Convenience. The District may, upon 30 Days' written notice to the Design-Builder, terminate this Agreement, in whole or in part, for the convenience of the District, without prejudice to any right or remedy otherwise available to the District. Upon receipt of such notice, the Design-Builder shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the District, the Design-Builder's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Design-Builder shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination of convenience by the District.

12.4 Set Off. Upon termination of this Agreement by the District, the District shall be entitled to furnish or have furnished the Services to be performed hereunder by the Design-Builder by whatever method the District may deem expedient. Also, in such case, the Design-Builder shall not be entitled to receive any further payment until completion of the Work and the total compensation to the Design-Builder under this Agreement shall be the amount that is equitable under the circumstances. If the District and the Design-Builder are unable to agree on the amount to be paid under the foregoing sentence, the District shall fix an amount, if any, that it deems appropriate in consideration of all

of the circumstances surrounding such termination, and shall make payment accordingly. The Design-Builder may dispute the District's assessment of the termination amount by the method of dispute resolution under Article 13 of this Agreement.

12.5 Suspension by the District for Convenience.

A. Procedure. The District may order the Design-Builder in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the District may determine to be appropriate for its convenience, but not in abrogation of the rights given Design-Builder in Section 12.1 above.

B. Adjustments to GMP and Schedule. Adjustments caused by suspension, delay or interruption shall be made for increases in the applicable GMP and/or the applicable Substantial Completion date. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 13 DISPUTE RESOLUTION

13.1 In the event of any dispute arising between the District and Design-Builder regarding any part of this Agreement, the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

13.2 Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the District's offices within five (5) Days of written request therefore, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the District's Authorized Representative, the Design-Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

13.3 Mediation.

A. If the dispute has not been resolved within five (5) Working Days after the special meeting has been held, a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed. The cost of the mediator shall be shared by the Parties. The mediator shall be given any written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within twenty (20) business days after his/her appointment, which meeting shall be attended by the District's Authorized Representative, the Design-Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such twenty (20) business day period, the mediator may meet with the Parties separately.

B. No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within forty (40) business days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties. If the dispute cannot be resolved through the mediation process, the Parties may pursue resolution through other legal remedies available to them under the terms of this Agreement. Notice of claim time limits will be stayed during the mediation process.

ARTICLE 14 ADDITIONAL PROVISIONS

14.1 Confidentiality. The Design-Builder shall not disclose or permit the disclosure of any confidential information except to its agents, employees and Subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement.

14.2 Limitation and Assignment. The District and the Design-Builder each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the District nor the Design-Builder shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Design-Builder may assign accounts receivable to a commercial bank for securing loans without approval of the District. Nothing contained in this Section shall prevent the Design-Builder from employing such consultants, associates or Subcontractors as the Design-Builder may deem appropriate to assist in performance of the Services hereunder.

14.3 Entire Agreement. This Agreement represents the entire and integrated agreement between the District and the Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and the Design-Builder. Nothing contained in this Agreement is intended to benefit any third party. Subcontractors, if any, and the Project Designers are not intended third-party beneficiaries of this Agreement.

14.4 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be enforceable without such provision.

14.5 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

14.6 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the District:

With copies to:

If to Design-Builder:

With copies to:

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.7 Governing Law. This Agreement shall be governed by the laws of the State of Arizona. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought exclusively in the Superior Court, Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the exclusive jurisdiction and venue of such Court. The Parties also expressly waive their right to remove any such

action to federal court. If an action or proceeding is brought for failure to observe any of the provisions of this Agreement, the prevailing Party is entitled to recover, as part of such action or proceedings, all litigation and collection expenses, including, but not limited to, expert witness fees, court costs, witness fees, reasonable attorney fees, and, without limitation, all copying, duplication, scanning, imaging, and/or related expenses related to document management, reproduction, and/or recovery.

14.8 No Waiver of Performance. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition right with respect to further performance.

14.9 Headings. The headings given to any of the provisions of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.10 Asbestos Free Materials. The Project is to be constructed by the Design-Builder with asbestos free materials. A written, notarized statement on company letterhead shall be submitted to the District by the Design-Builder with the final payment request certifying that the Design-Builder has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted. The Design-Builder shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Design-Builder or any of its Subcontractors or agents and were not specified in the design or required by the Contract Documents, the Design-Builder shall be liable for all costs related to the abatement of such asbestos and damages or claims against the District notwithstanding any statute of limitations or other legal bar to any claim by the District.

14.11 Cancellation. This Agreement may be cancelled by the District pursuant to A.R.S. § 38-511.

14.12 Survival of Representations and Warranties. Notwithstanding any other provision of this Agreement, the representations, warranties and covenants herein shall survive termination of this Agreement.

14.13 Endangered Hardwoods Prohibited. Design-Builder shall ensure that products containing endangered wood species shall not be utilized in the construction of the Project unless exempted pursuant to A.R.S. § 34-201(J), as amended.

14.14 Records and Audit Rights. Design-Builder's and its Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Design-Builder and its Subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Design-Builder and its Subcontractors are complying with the warranty under Subsection 14.15 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the District, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Design-Builder's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Design-Builder's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in Subsection 14.15 below. To the extent necessary for the District to audit Records as set forth in this Subsection, Design-Builder and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the District shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until six (6) years after the date of final payment by the District to Design-Builder pursuant to this Agreement. Design-Builder and its Subcontractors shall provide the District with adequate and appropriate workspace so that the District can conduct audits in compliance with the provisions of this Subsection. The District shall give Design-Builder or its Subcontractors reasonable advance notice of intended audits. Design-Builder shall require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.15 E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, the Design-Builder and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Design-Builder's or its Subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the

termination of this Agreement by the District.

14.16 Equal Treatment of Workers. Design-Builder shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Work. Design-Builder shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Design-Builder shall protect and indemnify the District and its representatives against any claim or liability arising from or based on the violation of such, whether by Design-Builder or its employees.

14.17 Equal Employment Opportunity Provisions. The following provisions, contained in Section 301 of Executive Order No. 11246, dated September 24, 1965, as amended, govern performance of work under this Agreement. Design-Builder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. Such action includes the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design-Builder agrees to post notices, setting forth the provisions of this Equal Opportunity clause, in conspicuous places available to employees and applicants for employment. Design-Builder will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability, in all solicitations or advertisements for employees placed by or on behalf of Design-Builder. Design-Builder will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement advising the labor union or workers’ representative of Design-Builder’s commitments under this Equal Opportunity Resolution, and will post copies of the notice in conspicuous places available to employees and applicants for employment. Design-Builder will comply with all provisions of Executive Order No. 11246, dated September 24, 1965, as amended, and with all the rules, regulations, and relevant orders of the Secretary of Labor. Design-Builder will furnish all information and reports required by Executive Order No. 11246, dated September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, and will allow the District and the Secretary of Labor to access his books, records, and accounts in order to ascertain compliance with such rules, regulations, and orders. This Agreement may be canceled, terminated, or suspended, in whole or in part if the Design-Builder does not comply with the provisions of this document. Other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, dated September 24, 1965, as amended, under rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law. Further, Design-Builder may be declared ineligible for further District contracts in accordance with procedures authorized in Executive Order No. 11246, dated September 24, 1965, as amended. Design-Builder must include the provisions of this Subparagraph 14.17 in every subcontract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontract or vendor.

14.18 Israel. Pursuant to A.R.S. § 35-393.01, Design-Builder certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a boycott of Israel.

14.19 China. Pursuant to and in compliance with A.R.S. § 35-394, Design-Builder agrees and certifies that it does not currently, and agrees for the duration of this Agreement will not, use: (i) the forced labor of ethnic Uyghurs in the People’s Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

14.20 Independent Contractor. The Design-Builder is and will be an independent contractor and whatever measure of control the District exercises over the work or deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Agreement will give or be construed to give the District the right to direct the Design-Builder as to the details of accomplishing the work or deliverable. These results will comply with all applicable laws and ordinances.

14.21 Remedies Not Exclusive. Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or

omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

14.22 Agreement Subject to Appropriation. The District is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the District's then-current fiscal year. The District's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the District concerning budgeted purposes and appropriation of funds. Should the District elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the District shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the District has no obligation or duty of good faith to budget or appropriate the payment of the District's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The District shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The District shall keep Design-Builder informed as to the availability of funds for this Agreement. The obligation of the District to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the District. Design-Builder hereby waives any and all rights to bring any claim against the District from or relating in any way to the District's termination of this Agreement pursuant to this Section.

14.23 Fair Interpretation. All Parties have been represented by counsel, or have had the opportunity to be represented by counsel, in the negotiation and drafting of this Agreement. This Agreement will be construed according to the fair meaning of its language. The rule of construction that ambiguities will be resolved against the Party who drafted a provision will not be employed in interpreting this Agreement.

14.24 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“DISTRICT”

By: _____
Its: _____

Date: _____

ATTEST:

By: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Its: _____

“DESIGN-BUILDER”

By: _____

Date: _____

Name: _____

Title: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 2026, before me, a notary public in and for said state, personally appeared _____, the _____ of _____, a _____ corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the Design-Build Agreement on behalf of _____.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

My Commission Expires:

Notary Public

**EXHIBIT A
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Construction Documents]

See following pages.

**EXHIBIT B
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Amendments]

See following pages.

**EXHIBIT C
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[GMP Proposals]

See following pages.

**EXHIBIT D
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Master Schedule]

See following pages.

**EXHIBIT E
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[The District's RFQ]

See following pages.

**EXHIBIT F
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Design-Builder's Response to the RFQ]

See following pages.

**EXHIBIT G
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Subcontractor Selection Program]

See following pages.

**EXHIBIT H
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Traffic Control/Construction Sequencing]

See following pages.

**EXHIBIT I
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Allowable General Conditions Cost Line Items]

See following pages.

ALLOWABLE GENERAL CONDITIONS COST LINE ITEMS

On-Site Project Management Staff

Safety Coordinator/Assistant(s)
Project Executive
Office Engineer(s)
Project Expeditor(s)
Assistant Superintendent(s)

CPM Scheduler
Superintendent(s)
Project Manager(s)
Project Support Staff
Out-of-State Project Specific Travel*

Bonds and Insurance

Builder's Risk Insurance
General Liability Insurance
Payment and Performance Bonds
Other Project Insurance as Required by Contract

Temporary Project Utilities

Non-LEED Recycling Dumpsters
Project Electricity
Monthly Telephone / Internet Service
Street Rental and Barricades
Fencing and Covered Walkways
Temporary Electrical Distribution and Meters
Project Water, Ice and Supplements to Prevent Dehydration
Site Erosion Control (BMP) and Project Entrance(s)

Temporary Toilets
Temporary Fire Protection
Telephone / Internet System Installation
Temporary Water Distribution and Meters

Field Offices & Office Supplies

Partnering Costs
Job Photos/Videos
Project Specific Signage
Postage/Special Shipping
Project/As-Built (Record) Drawings
Project Milestone Event(s)*
Move-In/Out and Office Setup
Employee Identification System
Drinking Water and Accessories (Including Ice)
Monthly Office Trailer Rental Costs
Mobilization and Demobilization (Equipment Only)

First Aid Supplies
Reproduction Services
Monthly Office Supplies
Remote Parking Expenses
Project Reference Manuals
Security System/Watchman
Safety Material and Equipment
Small Tools and Storage Trailers
Office Clean-Up/Janitorial Services
Field Engineering

* *Specific justification and all estimated costs shall be submitted and approved by the District prior to any travel or event.*

**EXHIBIT J
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Pre-Construction Cost Summary including hourly rates as applicable]

See following pages.

**EXHIBIT K
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Performance Bond]

See following page.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Maricopa County Special Health Care District, dba Valleywise Health (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 2026, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 2026.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record

**EXHIBIT L
TO
DESIGN-BUILD AGREEMENT
BETWEEN
MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT
D/B/A VALLEYWISE HEALTH**

[Payment Bond]

See following page.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Maricopa County Special Health Care District, dba Valleywise Health (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 2026, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 2026.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record