

**PUBLIC PRIVATE PARTNERSHIP (P3)  
DESIGN-BUILD-MAINTAIN AGREEMENT EXHIBITS**

for

**202 MA 054 H882701C  
SR 202L (SOUTH MOUNTAIN FREEWAY)  
I-10 (MARICOPA FREEWAY) – I-10 (PAPAGO FREEWAY)**

between



**ARIZONA DEPARTMENT OF TRANSPORTATION**

and

**CONNECT 202 PARTNERS, LLC**

**Dated as of: February 26, 2016**

**EXHIBIT 1**

**ABBREVIATIONS AND DEFINED TERMS**

Unless otherwise specified, wherever the abbreviations or defined terms included in this Exhibit 1 are used in the Agreement or the Technical Provisions, they shall have the meanings set forth below.

<b>AAA</b>	American Arbitration Association
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>ACC</b>	Arizona Corporation Commission
<b>ACFC</b>	Asphaltic Concrete Friction Course
<b>ADA</b>	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
<b>ADEQ</b>	Arizona Department of Environmental Quality
<b>ADOT</b>	Arizona Department of Transportation
<b>AHERA</b>	Asbestos Hazard Emergency Response Act
<b>ANSI</b>	American National Standards Institute
<b>AR-ACFC</b>	Asphalt Rubber-Asphaltic Concrete Friction Course
<b>AREMA</b>	American Railway Engineering and Maintenance of Way Association
<b>A.R.S.</b>	Arizona Revised Statutes
<b>ASLD</b>	Arizona State Land Department
<b>ASTM</b>	American Society of Testing and Materials
<b>ATC</b>	Alternative Technical Concept
<b>ATTI</b>	Arizona Technical Testing Institute
<b>AWS</b>	American Welding Society
<b>AZPDES</b>	Arizona Pollutant Discharge Elimination System
<b>BBS</b>	Battery Back-Up System
<b>BMP</b>	Best Management Practice
<b>BNSF</b>	Burlington Northern Santa Fe
<b>CAD</b>	Computer-Aided Design
<b>CADD</b>	Computer Aided Drafting and Design
<b>CCI</b>	ENR Construction Cost Index
<b>CCTV</b>	Closed Circuit Television
<b>CFR</b>	Code of Federal Regulations
<b>CGP</b>	Construction General Permit
<b>CHST</b>	Construction Health and Safety Technician
<b>CISPI</b>	Cast Iron Soil Pipe Institute
<b>CLOMR</b>	Conditional Letter of Map Revision
<b>CPI</b>	Consumer Price Index

<b>CPM</b>	Critical Path Method
<b>CQCM</b>	Construction Quality Control Manager
<b>CQMP</b>	Construction Quality Management Plan
<b>CR</b>	Construction Requirements
<b>CRM</b>	Comment Resolution Meeting
<b>CRSP</b>	Colorado Rockfall Simulation Program
<b>CWA</b>	Clean Water Act
<b>D&amp;C</b>	Design and Construction
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DEIS</b>	Draft Environmental Impact Statement
<b>DMS</b>	Dynamic Message Sign
<b>DPDs</b>	Detailed Pricing Documents
<b>DPS</b>	Arizona Department of Public Safety
<b>DR</b>	Design Requirements
<b>DTM</b>	Digital Terrain Model
<b>DTPA</b>	Diethylene Triamine Pentaacetic Acid
<b>EB</b>	Eastbound
<b>ECM</b>	Environmental Compliance Manager
<b>ECP</b>	Environmental Communications Protocol
<b>EDMS</b>	Electronic Data Management System
<b>EMP</b>	Environmental Management Plan
<b>EPA</b>	United States Environmental Protection Agency
<b>ESA</b>	Environmental Prior Assessment
<b>ESAL</b>	Equivalent Single-Axle Load
<b>°F</b>	Degrees Fahrenheit
<b>FEIS</b>	Final Environmental Impact Statement
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	U.S. Department of Transportation, Federal Highway Administration
<b>fps</b>	Feet per Second
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GP</b>	General Provisions
<b>GPS</b>	Global Positioning System
<b>GRIC</b>	Gila River Indian Community
<b>HCRS</b>	Highway Condition Reporting System
<b>H:V</b>	Horizontal:Vertical
<b>HEC</b>	Hydraulic Engineering Circular
<b>HOV</b>	High-Occupancy Vehicle
<b>HVAC</b>	Heating, Ventilation and Air Conditioning

<b>I-10</b>	Interstate 10
<b>IA</b>	Independent Assurance
<b>ID</b>	Identification
<b>IQF</b>	Independent Quality Firm
<b>IRI</b>	International Roughness Index
<b>ISO</b>	International Standards Organization or International Organization for Standardization
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>ksi</b>	Kips per Square Inch
<b>L/DCR</b>	Location/Design Concept Report
<b>LAADCR</b>	Landscape Architecture and Aesthetics Design Concept Report
<b>LED</b>	Light-Emitting Diode
<b>LiDAR</b>	Light Detection and Ranging
<b>In</b>	Lane
<b>LOS</b>	Level of Service
<b>LRFD</b>	Load and Resistance Factor Design
<b>m2</b>	Square Meter
<b>MAG</b>	Maricopa Association of Governments
<b>MASH</b>	Manual for Assessing Safety Hardware
<b>mcd</b>	Millicandelas
<b>MDR</b>	Materials Design Report
<b>MIS</b>	Maintenance Information System
<b>MMP</b>	Maintenance Management Plan
<b>MOT</b>	Maintenance of Traffic
<b>mph</b>	Miles per Hour
<b>MQMP</b>	Maintenance Quality Management Plan
<b>MR</b>	Maintenance Requirements
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>MSE</b>	Mechanically Stabilized Earth
<b>MSMP</b>	Maintenance Safety Management Plan
<b>MUTCD</b>	Manual of Uniform Traffic Control Devices
<b>NAD</b>	North American Datum
<b>NAVD</b>	North American Vertical Datum
<b>NB</b>	Northbound
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NEC</b>	National Electrical Code
<b>NEMA</b>	National Electrical Manufacturers Association

<b>NEPA</b>	National Environmental Policy Act
<b>NESHAP</b>	National Emission Standards for Hazardous Air Pollutants
<b>NOI</b>	Notice of Intent
<b>NOT</b>	Notice of Termination
<b>NTP</b>	Notice to Proceed
<b>OEM</b>	Original Equipment Manufacturers
<b>OJT</b>	On-the-Job Training
<b>OSHA</b>	Occupational Safety and Health Administration
<b>P3</b>	Public-Private Partnership
<b>PA</b>	Programmatic Agreement
<b>PCCP</b>	Portland Cement Concrete Pavement
<b>PCMS</b>	Portable Changeable Message Signs
<b>PDF</b>	Portable Document Format
<b>PDS</b>	Pavement Design Summary
<b>PIP</b>	Public Involvement Plan
<b>PMP</b>	Project Management Plan
<b>PPE</b>	Personal Protective Equipment
<b>psf</b>	Pounds per Square Foot
<b>PSQMP</b>	Professional Services Quality Management Plan
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>QMP</b>	Quality Management Plan
<b>REC</b>	Recognized Environmental Condition
<b>RFC</b>	Release for Construction
<b>RFI</b>	Request for Information
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RIDs</b>	Reference Information Documents
<b>ROD</b>	Record of Decision
<b>ROW</b>	Right-of-Way
<b>SB</b>	Southbound
<b>SDPP</b>	Sewage Discharge Prevention Plan
<b>SF</b>	Square Foot
<b>SHPO</b>	State Historic Preservation Officer
<b>SMPP</b>	South Mountain Park/Preserve
<b>SPT</b>	Standard Penetration Test
<b>SPUI</b>	Single-Point Urban Interchange
<b>SR</b>	State Route

<b>SRP</b>	Salt River Project
<b>SRVWUA</b>	Salt River Valley Water Users Association
<b>SUE</b>	Subsurface Utility Engineering
<b>SWPPP</b>	Stormwater Pollution Prevention Plan
<b>TCE</b>	Temporary Construction Easement
<b>TCP</b>	Traffic Control Plan
<b>TL</b>	Testing Level
<b>TMP</b>	Transportation Management Plan
<b>TPs</b>	Technical Provisions
<b>TRACS</b>	Transportation Accounting System
<b>TWG</b>	Technical Work Group
<b>UPRR</b>	Union Pacific Railroad
<b>UPS</b>	Uninterruptable Power Supply
<b>US</b>	United States
<b>USACE</b>	United States Army Corps of Engineers
<b>USFWS</b>	United States Fish and Wildlife Service
<b>USPAP</b>	Uniform Standard of Professional Appraisal Practices
<b>UTP</b>	Unshielded Twisted Pair
<b>VAC</b>	Volts Alternative Current
<b>VLN</b>	Virtual Local Area Network
<b>WB</b>	Westbound
<b>WBS</b>	Work Breakdown Structure

1

2 **3D Model** means the models described in Section GP 110.10.2.5.4.2 of the Technical  
3 Provisions.

4 **4D Model Simulations** means the simulations described in Section GP 110.10.2.5.4.3  
5 of the Technical Provisions.

6 **ACC Submittal Package** means the package described in Section DR 436.3.2 of the  
7 Technical Provisions.

8 **Acceptance Program** means the program comprised of the Quality Acceptance  
9 (performed by the IQF) and the Owner Verification (performed by ADOT) meeting the  
10 requirements of 23 CFR 637 Subpart B.

11 **Acquisition Packages** means the documents and information for the acquisition of  
12 parcels for the Project ROW described in Section DR 470.3.6 of the Technical  
13 Provisions.

1 **Action Report** means the report described in Section GP 110.05.4.1 of the Technical  
2 Provisions.

3 **ADA Compliance and Feasibility Report** means the report described in  
4 Section DR 440.3.4 of the Technical Provisions.

5 **Adjacent Work** means any project, work, improvement or development to be planned,  
6 designed or constructed that could or does impact the Project or that is located on  
7 property contiguous with the Project. Examples of Adjacent Work include proposed  
8 subdivisions, other roads constructed by Governmental Entities, site grading and  
9 drainage, and other development improvement plans and Utility projects.

10 **Adjustment Standards** means the standard specifications, standards of practice, and  
11 construction methods that a Utility Company customarily applies to facilities  
12 (comparable to those being Adjusted on account of the Project) constructed by the  
13 Utility Company (or for the Utility Company by its contractors), at its own expense.  
14 Unless the context or applicable Utility Agreement requires otherwise, references in the  
15 Contract Documents to a Utility Company's "applicable Adjustment Standards" refer to  
16 those that are in effect as of the Setting Date.

17 **Adjustments** means Utility Adjustments.

18 **Administrative Settlement** means a negotiated value agreement for other than the  
19 amount of the approved appraisal for Project ROW.

20 **Administrative Settlement Offer** means an offer for an Administrative Settlement.

21 **ADOT** means the Arizona Department of Transportation, a public agency as constituted  
22 under the laws of the State of Arizona.

23 **ADOT Additional Property** means any real property (which term is inclusive of all  
24 permanent estates and interests in real property, and Temporary Construction  
25 Easements), improvements and fixtures located outside of the Schematic ROW and  
26 outside of the Developer-Designated ROW that must be acquired due only to an ADOT-  
27 Directed Change, a Necessary Schematic ROW Change, or the necessity to condemn  
28 an entire parcel even though only a portion of the parcel is within the Schematic ROW,  
29 subject to ADOT's reasonable determination that the property is necessary, including  
30 any air space, surface rights and subsurface rights within such additional real property  
31 area that ADOT directs Developer to acquire for the Project. The term specifically  
32 excludes: (i) Replacement Utility Property Interests; and (ii) any temporary easements  
33 or other real property interests that Developer may deem necessary or advisable to  
34 acquire, at its own cost and expense, for Developer's Temporary Work Areas.

35 **ADOT-Caused Delay** means any of the following events, to the extent they result in a  
36 delay or interruption in performance of any material Developer obligation under the  
37 Agreement, and provided such events are beyond Developer's control and are not due  
38 to any act, omission, negligence, recklessness, willful misconduct or breach or violation  
39 of contract, the requirements of the Contract Documents or Law by any Developer-

1 Related Entity, and further provided that such events (or the effects of such events)  
2 could not have been avoided by the exercise of caution, due diligence or reasonable  
3 efforts by Developer:

4 (a) Failure of ADOT to issue NTP 1 within five days after the anticipated  
5 issuance date set forth in Section 7.3 of the Agreement;

6 (b) Failure of ADOT to issue NTP 2 within ten Business Days after the  
7 anticipated issuance date set forth in Section 7.4 of the Agreement;

8 (c) ADOT-Directed Change under clause (a) of the definition thereof;

9 (d) Except for Retained Parcels, failure or inability of ADOT to make available  
10 to Developer any Project ROW parcel, including any ADOT Additional Property, within  
11 180 days after ADOT's receipt and approval of Developer's written request to  
12 commence a condemnation proceeding and a complete Condemnation Package,  
13 subject, however, to the exceptions and limitations set forth in Section 14.4.3 of the  
14 Agreement; provided that "make available" means that ADOT has (i) obtained an order  
15 for immediate possession, (ii) closed the acquisition of the parcel or (iii) otherwise  
16 obtained permanent right of entry through settlement, negotiation, the condemnation  
17 process or otherwise, which in each case may be subject to covenants, conditions,  
18 restrictions and limitations with which Developer must comply. For clarity, "make  
19 available" does not require commencement or completion of relocation, demolition or  
20 clearance (such as but not limited to data recovery for cultural resources);

21 (e) Failure or inability of ADOT to make available for construction to  
22 Developer any Retained Parcel by the respective time set forth for each Retained  
23 Parcel in TP Attachment 470-3 of the Technical Provisions; provided that "make  
24 available for construction" means that:

25 (i) ADOT has (A) obtained an order for immediate possession,  
26 (B) closed the acquisition of the parcel or (C) otherwise obtained permanent right of  
27 entry through settlement, negotiation, the condemnation process or otherwise, which in  
28 each case may be subject to covenants, conditions, restrictions and limitations with  
29 which Developer must comply; and

30 (ii) ADOT has completed relocation, demolition, Hazardous Materials  
31 remediation, and clearance (which includes data recovery for any identified cultural  
32 resources), except Utility Adjustments;

33 (f) Failure of ADOT to provide responses to proposed schedules, plans,  
34 Design Documents, Acquisition Packages, Condemnation Packages, and other  
35 Submittals and matters submitted to ADOT after the Effective Date for which response  
36 is required under the Contract Documents as an express prerequisite to Developer's  
37 right to proceed or act, within the time periods (if any) indicated in the Contract  
38 Documents, or if no time period is indicated, within a reasonable time, taking into  
39 consideration (i) the nature, importance and complexity of the Submittal or matter,  
40 (ii) the number of Submittals or such other items which are then pending for ADOT's



1 response, (iii) the completeness and accuracy of the Submittal or such other item, and  
2 (iv) Developer's performance and history of Nonconforming Work under the Contract  
3 Documents, following delivery of written notice from Developer requesting such action in  
4 accordance with the terms and requirements of the Contract Documents;

5 (g) Suspensions of the Work that ADOT orders under Section 18.1 of the  
6 Agreement, subject to the following:

7 (i) Any suspension of Work lasting up to 45 days arising from a Relief  
8 Event under clause (f), (i), (j), (k), (m), (o) or (p), respectively, of the definition of "Relief  
9 Event" (Force Majeure Events, presence or Release of Hazardous Materials, ADOT's  
10 performance of data recovery respecting archeological, paleontological, historical or  
11 cultural resources, ADOT's actions related to endangered or threatened species,  
12 litigation, or security threat, rule, order or directive) shall not be considered an ADOT-  
13 Caused Delay (although it would qualify as a Relief Event under clause (f), i), (j), (k),  
14 (m), (o) or (p), respectively, of the definition of "Relief Event", with all rights to relief set  
15 forth in Article 14 of the Agreement), despite the fact that ADOT may specifically direct  
16 Developer to suspend the Work; but

17 (ii) If any such suspension extends beyond 45 days, then suspension  
18 thereafter shall be a separate and independent ADOT-Caused Delay and Relief Event.

19 (h) Failure of ADOT to complete testing and data recovery of cultural  
20 resources at the Known Cultural Resource Sites (i) that are neither in the Center  
21 Segment nor in Retained Parcels, within 180 days after issuance of NTP 1 or (ii) that  
22 are in the Center Segment but not in Retained Parcels, by the later of (A) March 5, 2018  
23 or (B) issuance of NTP 3;

24 (i) Failure or inability to complete an ADOT Utility Adjustment by the  
25 applicable deadline set forth in Section DR 430.3.4 of the Technical Provisions; and

26 (j) Any other event that the Contract Documents expressly state is an  
27 "ADOT-Caused Delay".

28 Any proper suspension of Work pursuant to Section 18.2 of the Agreement shall not be  
29 considered an ADOT-Caused Delay.

30 **ADOT Condemnation Letter** means a letter informing the property owner that ADOT  
31 intends to file a condemnation proceeding to acquire the owner's property (see example  
32 in RIDs).

33 **ADOT Consultant** means any firm or person under contract to ADOT to perform  
34 services for or on behalf of ADOT.

35 **ADOT-Directed Change** means:

36 (a) Changes in the scope of the Work or terms and conditions of the  
37 Contract Documents (including changes in the standards applicable to the Work),

1 including Discriminatory Maintenance Changes, which ADOT has directed Developer to  
2 perform as described in Section 15.1 of the Agreement; and

3 (b) Suspensions of the Work that ADOT orders under Section 18.1 of the  
4 Agreement, for more than the permitted period of time set forth in Section 18.1.2 of the  
5 Agreement, subject to the following:

6 (i) Any suspension of Work lasting up to 45 days arising from a Relief  
7 Event under clause (f), (i), (j), (k), (m), (o) or (p), respectively, of the definition of "Relief  
8 Event" (Force Majeure Events, presence or Release of Hazardous Materials, ADOT's  
9 performance of data recovery respecting archeological, paleontological, historical or  
10 cultural resources, ADOT's actions related to endangered or threatened species  
11 litigation, or security threat, rule, order or directive) shall not be considered an ADOT-  
12 Directed Change (although it would qualify as a Relief Event under clause (f), i), (j), (k),  
13 (m), (o) or (p), respectively, of the definition of "Relief Event", with all rights to relief set  
14 forth in Article 14 of the Agreement), despite the fact that ADOT may specifically direct  
15 Developer to suspend the Work; but

16 (ii) If any such suspension extends beyond 45 days, then suspension  
17 thereafter shall be a separate and independent ADOT-Directed Change and Relief  
18 Event.

19 Non-Discriminatory O&M Changes shall not be considered ADOT-Directed Changes.

20 **ADOT's Recoverable Costs** means:

21 (c) The costs of any assistance, action, activity or Work undertaken by  
22 ADOT and for which Developer is liable, or is to reimburse ADOT, under the terms of  
23 the Contract Documents, including the charges of third party contractors and reasonably  
24 allocated wages, salaries, compensation and overhead of ADOT staff and employees  
25 performing such action, activity or Work; plus

26 (d) Third-party costs ADOT incurs to publicly procure any such third party  
27 contractors; plus

28 (e) Reasonable fees and costs of attorneys (including the reasonably  
29 allocable fees and costs of the Arizona Attorney General's Office), financial advisors,  
30 engineers, architects, insurance brokers and advisors, investigators, traffic and revenue  
31 consultants, risk management consultants, other consultants, and expert witnesses, as  
32 well as court costs and other litigation costs, in connection with any such assistance,  
33 action, activity or Work, including in connection with defending claims by and resolving  
34 disputes with third party contractors; plus

35 (f) Interest on all the foregoing sums at the applicable floating rate set forth  
36 in Section 25.13.3 of the Agreement, commencing on the date due under the applicable  
37 terms of the Contract Documents and continuing until paid.

1 **ADOT Standard Specifications** means the Arizona Department of Transportation  
2 Standard Specifications for Road and Bridge Construction, adopted by the Arizona  
3 State Transportation Board, including all revisions thereto applicable on the Setting  
4 Date.

5 **ADOT Systems Engineering Checklist** means the checklist described in  
6 Section DR 466.3.1 of the Technical Provisions.

7 **ADOT Utility Adjustment** means the Utility Adjustments for which ADOT is  
8 responsible, as more particularly set forth in Section DR 430.3.4 of the Technical  
9 Provisions.

10 **Aesthetic Area** means the aesthetics boundaries identified in the Landscape  
11 Architecture and Aesthetics Design Concept Report included in the RIDs.

12 **Aesthetics and Landscape Master Plan** means the plan described in  
13 Section DR 450.2.7 of the Technical Provisions.

14 **Aesthetics and Landscape Plans** means the plans described in Section DR 450.3.5 of  
15 the Technical Provisions.

16 **Affiliate** means:

17 (a) Any shareholder, member, partner or joint venture member of Developer;

18 (b) Any Person that directly or indirectly through one or more intermediaries  
19 controls, or is controlled by, or is under common control with, Developer or any of its  
20 shareholders, members, partners or joint venture members; and

21 (c) Any Person for which 10 percent or more of the equity interest in such  
22 Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of  
23 the shareholders, members, partners or joint venture members of Developer, or (iii) any  
24 Affiliate of Developer under clause (b) of this definition.

25 For purposes of this definition the term “control” means the possession, directly or  
26 indirectly, of the power to cause the direction of the management of a Person, whether  
27 through voting securities, by contract, family relationship or otherwise.

28 **Affiliated** means having the status of an Affiliate.

29 **Agreement** means this Design-Build-Maintain Agreement, including all exhibits  
30 attached hereto, as such Agreement or any such exhibits may be amended,  
31 supplemented, restated or otherwise modified, from time to time, in accordance with the  
32 terms hereof, and the executed originals of exhibits that are contracts.

33 **AHERA Asbestos Report** means an Asbestos Emergency Response Act (AHERA)  
34 *Asbestos Report* completed by an AHERA certified building inspector with asbestos

1 samples analyzed by a National Voluntary Laboratory Accreditation Program accredited  
2 lab referenced by an asbestos and lead paint survey report.

3 **Airspace** means any and all real property, including the surface of the ground and  
4 submerged lands, within the vertical column extending above and below the surface  
5 boundaries or water surface, as applicable, of the Project ROW and whenever not  
6 necessary or required for the Project or for developing, permitting, designing,  
7 constructing, installing, equipping, maintaining, repairing, reconstructing, restoring,  
8 rehabilitating, renewing, or replacing the Project or Developer's timely fulfillment of its  
9 obligations under the Contract Documents.

10 **Alternative Technical Concept** has the meaning set forth in Section 3 of the ITP.

11 **Annual Capital Asset Replacement Work Payment** means each of the annual capital  
12 asset replacement work payments set forth in the Capital Asset Replacement Work  
13 Breakdown (Exhibit 2-4.4 to the Agreement).

14 **Annual Maintenance Services Report** means the report described in Section MR  
15 400.3.4B of the Technical Provisions.

16 **Annual Routine Maintenance Payment** means the annual routine maintenance  
17 payments set forth in the Routine Maintenance Breakdown (Exhibit 2-4.3 to the  
18 Agreement).

19 **Application for Governmental Approval** means any application for a Governmental  
20 Approval.

21 **Appraisal** means an appraisal, as described in, and satisfying the requirements of,  
22 Section DR 470.3.5.1 of the Technical Provisions.

23 **Appraisal Review** means the process for reviewing an Appraisal or Appraisals as more  
24 particularly described in Section DR 420.3.5.2 of the Technical Provisions.

25 **Appraisal Reviewer** means an individual performing an Appraisal Review who satisfies  
26 the requirements of Section GP 110.08.3.22 of the Technical Provisions.

27 **Appraiser** means an individual performing an Appraisal who satisfies the requirements  
28 of Section GP 110.08.3.22 of the Technical Provisions.

29 **Approved Appraiser** means the appraiser who prepared the ADOT-approved  
30 Appraisal.

31 **Archaeological Documentation and Reporting** means the compilation and synthesis  
32 of the background, field and laboratory research that results from the archaeological  
33 surveying, whether performed by ADOT, Developer or another party, of parcels on  
34 which Developer will perform any Work.

**Arizona 811** shall mean the field locator that performs all requirements as specified in A.R.S. §§ 40-360.21 through 40-360.29 for all underground facilities.

**As-Built Drainage Report** means the report described in Section DR 445.3.3 of the Technical Provisions.

**As-Built Geotechnical Engineering Report** means the report described in Section DR 416.3.2 of the Technical Provisions.

**As-Built Load Rating Report** means the report described in Section CR 455.3.6 of the Technical Provisions.

**As-Built Schedule** means a schedule, as more particularly described in, and satisfying the requirements of, Section GP 110.06.2.12 of the Technical Provisions.

**Authorized Representative** has the meaning set forth in Section 25.6.1 of the Agreement.

**Barrier, End Treatment, and Crash Cushion Certifications** means Developer's certifications as described in Section CR 440.3 of the Technical Provisions.

**Base CCI** means 10092.

**Base CPI** means 128.749.

**Basic Configuration** has the meaning set forth in Section GP 110.01.3.1 of the Technical Provisions.

**Basis of Design Report** means a report, as described in, and satisfying the requirements of, Section GP 110.01.2.2 of the Technical Provisions.

**Best Management Practices** has the meaning set forth in Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).

**Betterment** has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement. In all other cases, "Betterment" means any upgrading of a Utility or related facilities in the course of a Utility Adjustment that is not attributable to the construction of the Project, and is made solely for the benefit of and at the election of the Utility Company, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

(a) Any upgrading which is required by the Project;

(b) Replacement devices or materials that are of equivalent standards although not identical;

(c) Replacement of devices or materials no longer regularly manufactured with an equivalent grade or size;

(d) Any upgrading required by applicable Law;

(e) Replacement devices or materials that are used for reasons of economy in accordance with the Utility Company's Adjustment Standards (e.g., non-stocked items may be uneconomical to purchase); or

(f) Any upgrading required by the Utility Company's written Adjustment Standards.

**Blast Monitoring Plan** means a plan, as described in, and satisfying the requirements of, Section CR 416.3.4.4 of the Technical Provisions.

**Blasters in Charge** means the individuals described in Section GP 110.08.3.13 of the Technical Provisions.

**Blasting Information Report** means a report, as described in, and satisfying the requirements of, Section CR 416.3.4.5 of the Technical Provisions.

**Blasting Plan** means a plan, as described in, and satisfying the requirements of, Section CR 416.3.4.7 of the Technical Provisions.

**Blasting Report** means a report, as described in, and satisfying the requirements of, Section CR 416.3.4.4 of the Technical Provisions.

**Blasting Supervisors** means the individuals described in Section GP 110.08.3.12 of the Technical Provisions.

**Books and Records** means any and all documents, books, records, papers, or other information relating to the Project, Project ROW, Utility Adjustments or Work, including:

(a) All design and construction documents, and maintenance documents (including drawings, specifications, submittals, subcontracts, subconsultant agreements, purchase orders, invoices, schedules, meeting minutes, budgets, forecasts, change orders, Utility Adjustment documents and files);

(b) Income statements, balance sheets, statements of cash flow and changes in financial position, and details regarding expenses and capital expenditures;

(c) All budgets, certificates, claims, contract agreements, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) that is analyzed, categorized, characterized, created, collected, generated, maintained,

1 processed, produced, prepared, provided, recorded, stored or used by Developer or any  
2 of its Representatives in connection with the Project; and

3 (d) With respect to all of the above, any information that is stored  
4 electronically or on computer-related media, including in the Electronic Document  
5 Management System.

6 **Bridge Hydraulics Report** means the report described in Section DR 457.3.8 of the  
7 Technical Provisions.

8 **Business Day** means any day except Saturdays, Sundays and Holidays.

9 **Buy America** means the Buy America requirements set forth in 23 CFR 635.410.

10 **Capital Asset Replacement Area** means not more than four areas, designated by  
11 Developer prior to Substantial Completion, over the full Project length, the shortest of  
12 which shall be a minimum of two miles and the longest of which shall be a maximum of  
13 ten miles. Each such area shall encompass all Project roadway and shoulder pavement  
14 in both directions.

15 **Capital Asset Replacement Work** means reconstruction, rehabilitation, restoration,  
16 renewal, replacement or major capital repair of (a) the pavement Element of the Project,  
17 including mainline shoulder pavement, frontage road and crossroad concrete pavement,  
18 and concurrent replacement of pavement markings and delineators, (b) all or a  
19 substantial portion of the pavement striping, independent of pavement replacement, (c)  
20 all or a substantial portion of the bridge deck joint seals, (d) all or a substantial portion of  
21 the luminaires for Project lighting, (d) all or a substantial portion of the signage Elements  
22 of the Project, (e) all or a substantial portion of the corridor traffic signal heads and  
23 lenses, (f) all or a substantial portion of the irrigation heads, and (g) any Elements to the  
24 extent required to be performed and completed prior to the end of the Term in order to  
25 meet the Handback Requirements, including irrigation system software. Capital Asset  
26 Replacement Work also includes related design, engineering, insurance, bonding and  
27 other soft costs.

28 **Capital Asset Replacement Work Plan** means the plan for Capital Asset Replacement  
29 Work, to be prepared and updated by Developer pursuant to Section 8.3.2 of the  
30 Agreement. The Capital Asset Replacement Work Plan is part of the Maintenance  
31 Management Plan.

32 **Capital Asset Replacement Work Schedule** means the schedule for Capital Asset  
33 Replacement Work, to be prepared and updated by Developer pursuant to Section  
34 8.3.2.2 of the Agreement. The Capital Asset Replacement Work Schedule is part of the  
35 Capital Asset Replacement Work Plan.

36 **Center Segment** means the section of the Project alignment shown in the file titled  
37 "2015-05 Center Segment GIS Files.zip." provided in the Reference Information  
38 Documents and incorporated herein by reference.

1 **Certificate of Final Acceptance** means the certificate issued by ADOT indicating that  
2 the Project has achieved the conditions for Final Acceptance set forth in Section 6.6.4.1  
3 of the Agreement.

4 **Certificate of Substantial Completion** means the certificate issued by ADOT  
5 indicating that the Project has achieved the conditions for Substantial Completion set  
6 forth in Sections 6.6.1.1 and 6.6.3 of the Agreement.

7 **Change in Law** means:

8 (a) The adoption of any Law of the State after the Setting Date; or

9 (b) Any change in the Law of the State, or in the interpretation or application  
10 thereof by any Governmental Entity of the State, after the Setting Date, in each case  
11 that is materially inconsistent with Laws of the State in effect on the Setting Date.

12 The term "Change in Law" excludes:

13 (i) Any change in, or new, federal or local Law;

14 (ii) Any change in, or new, Law of the State that also constitutes or  
15 causes a change in, or new, Adjustment Standards;

16 (iii) Any change in, or new, Law passed or adopted but not yet effective  
17 as of the Setting Date; and

18 (iv) Any change in, or new, Law of the State relating to Developer's  
19 general business operations, including licensing and registration fees, income taxes,  
20 gross receipts taxes, property taxes, transaction privilege taxes other than those  
21 changes set forth below, sales and use taxes, social security, Medicare, unemployment  
22 and other payroll-related taxes.

23 The term "Change in Law" includes any increase after the Setting Date in the combined  
24 rate of State and local transaction privilege taxes on materials incorporated or to be  
25 incorporated into the Project during the Maintenance Period.

26 **Change of Control** means any assignment, sale, financing, grant of security interest,  
27 transfer of interest or other transaction of any type or description, including by or  
28 through voting securities, asset transfer, contract, merger, acquisition, succession,  
29 dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in  
30 possession of the power to direct or control or cause the direction or control of the  
31 management of Developer or a material aspect of its business. A Change of Control of  
32 a shareholder, member, partner or joint venture member of Developer may constitute a  
33 Change of Control of Developer if such shareholder, member, partner or joint venture  
34 member possesses the power to direct or control or cause the direction or control of the  
35 management of Developer. Notwithstanding the foregoing, the following shall not  
36 constitute a Change of Control:



1 (a) A change in possession of the power to direct or control the management  
2 of Developer or a material aspect of its business due solely to a bona fide transaction  
3 involving beneficial interests in the ultimate parent organization of a shareholder,  
4 member, partner or joint venture member of Developer, (but not if the shareholder,  
5 member, partner or joint venture member is the ultimate parent organization), unless the  
6 transferee in such transaction is at the time of the transaction suspended or debarred or  
7 subject to a proceeding to suspend or debar from bidding, proposing or contracting with  
8 any federal or State department or agency;

9 (b) An upstream reorganization or transfer of direct or indirect interests in  
10 Developer so long as there occurs no change in the entity with ultimate power to direct  
11 or control or cause the direction or control of the management of Developer;

12 (c) A transfer of interests between managed funds that are under common  
13 ownership or control other than a change in the management or control of a fund that  
14 manages or controls Developer;

15 (d) The exercise of minority veto or voting rights (whether provided by  
16 applicable Law, by Developer's organizational documents or by related member or  
17 shareholder agreements or similar agreements) over major business decisions of  
18 Developer, provided that if such minority veto or voting rights are provided by  
19 shareholder or similar agreements, ADOT has received copies of such agreements; or

20 (e) The voluntary resignation of a shareholder, member, partner or joint  
21 venture member of Developer during the Maintenance Period, but only if (i) the  
22 resigning shareholder, member, partner or joint venture member has not been in control  
23 of the management of Developer at any time prior thereto, (ii) the resignation occurs  
24 following expiration of the statutory period of repose under Arizona Revised Statutes  
25 Section 12-552, and (iii) after the resignation the minimum Tangible Net Worth  
26 requirements of Section 10.4.3 of the Agreement will continue to be met.

27 **Change Request** means a written request, in the form attached to the Agreement as  
28 Exhibit 13 to the Agreement, as it may be revised by ADOT, issued by Developer to  
29 ADOT under Section 15.2 of the Agreement, advising ADOT that Developer seeks a  
30 Supplemental Agreement.

31 **Character Area** means the landscaping boundaries identified in the Landscape  
32 Architecture and Aesthetics Design Concept Report included in the RIDs.

33 **Claim** means: (a) a demand by Developer, which is or potentially could be disputed by  
34 ADOT, for a time extension under the Contract Documents or payment of money or  
35 damages from ADOT to Developer; or (b) a demand by ADOT, which is or potentially  
36 could be disputed by Developer, for payment of money or damages from Developer to  
37 ADOT.

38 **Claim Deductible** means the following amounts, as applicable, for each separate  
39 occurrence of a Relief Event: (a) the first \$50,000 of Extra Work Costs, subject to  
40 adjustment as provided in Section 14.3 of the Agreement; and (b) the amount equal to

1 the Delay Costs for the first ten days of delay to the Critical Path due to the Relief  
2 Event, subject to an aggregate cap of 100 days.

3 **Closure or Lane Closure** means that any traffic lane, ramp, cross road, trail, bike lane,  
4 shoulder or sidewalk is closed or blocked, or that the use thereof is otherwise restricted  
5 for any duration.

6 **Collocated Office Layout Plan** means the layout plan for the collocated office to be  
7 occupied by ADOT and Developer, as more particularly described in Section GP  
8 110.05.2.6 of the Technical Provisions.

9 **Color Samples** means the color samples described in Section CR 450.3.2.3 of the  
10 Technical Provisions.

11 **Comment Resolution Form** means the form described in Section GP 110.10.2.6 of the  
12 Technical Provisions.

13 **Committed DBE** has the meaning set forth in Section 3.01 of the DBE Special  
14 Provisions.

15 **Comparable Facility** means highways or bridges, as applicable, substantially similar to  
16 the Project and associated facilities, including frontage roads, as applicable. For the  
17 purposes of this definition, determination of what highways and bridges are substantially  
18 similar to the Project shall be based on any one or more highways or bridges, as  
19 applicable, of similar age, design, engineering, construction, topographical features,  
20 operating systems and features, or other features or situations, or based on a  
21 geographical area in which highways or bridges, as applicable, have been or are  
22 susceptible to being affected by a common event (such as but not limited to flood or  
23 tornado). The presence or absence of tolling and tolling facilities shall not be a factor in  
24 determining whether a facility is substantially similar to the Project.

25 **Completion Deadline** means either or both of the Substantial Completion Deadline and  
26 Final Acceptance Deadline, as the context requires.

27 **Compliance Evaluation Report** means the report referred to in Section CR 420.3.2.5.1  
28 of the Technical Provisions.

29 **Computer Disaster Recovery Plan** means the plan described in, and satisfying the  
30 requirements of, Section GP 110.05.4.1J of the Technical Provisions.

31 **Condemnation Package** means the documents and information for the condemnation  
32 of parcels for the Project ROW described in Section DR 470.4.5 of the Technical  
33 Provisions.

34 **Construction Documents** means all Project and Utility Adjustment Shop Drawings and  
35 Working Drawings, fabrication plans, material and hardware descriptions and  
36 specifications.

1 **Construction Independent Quality Manager** means the individual appointed by the  
2 IQF who is responsible for management of construction Quality Acceptance functions,  
3 as more particularly described in Section GP 110.08.3.4 of the Technical Provisions.

4 **Construction Manager** means the individual described in Section GP 110.08.2.2 of the  
5 Technical Provisions. The Construction Manager is one of the Key Personnel listed in  
6 Exhibit 9-2 of the Agreement.

7 **Construction Operations Survey** has the meaning set forth in Section CR 425.2.3.6 of  
8 the Technical Provisions.

9 **Construction Period** or **D&C Period** means the period of the Term from the Effective  
10 Date up to the Substantial Completion Date.

11 **Construction Quality Management Plan** means the plan that establishes quality  
12 control and quality acceptance procedures for the Work as more particularly described  
13 in Section GP 110.07.2.1.3 of the Technical Provisions.

14 **Construction Quality Manager** means the individual described in Section GP  
15 110.08.3.2 of the Technical Provisions.

16 **Construction Survey Report** means the report described in, and satisfying the  
17 requirements of, Section CR 410.3.3 of the Technical Provisions.

18 **Construction Work** means all Work to build or construct, make, form, manufacture,  
19 furnish, install, supply, deliver or equip the Project or the Utility Adjustments.  
20 Construction Work includes landscaping and landscape establishment.

21 **Consumer Price Index** means the Consumer Price Index for All Urban Consumers  
22 (CPI-U), All Items, for the Phoenix-Mesa metropolitan statistical area, as published  
23 twice per year by the United States Department of Labor, Bureau of Labor Statistics, for  
24 which the base year is 1982-84 = 100, or if such publication ceases to be in existence, a  
25 comparable index selected by ADOT and approved by Developer, acting reasonably. If  
26 such index is revised so that the base year differs from that set forth above, the CPI  
27 shall be converted in accordance with the conversion factor published by the United  
28 States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor  
29 Statistics otherwise alters its method of calculating such index, the Parties shall  
30 mutually determine appropriate adjustments in the affected index.

31 **Contract Documents** has the meaning set forth in Section 1.2.1 of the Agreement.

32 **Contractor Cycle Key Date** means the dates on which ADOT will make payments  
33 owing from ADOT to Developer under the Agreement. Such payment dates will occur  
34 on the third Wednesday of each month, and cover the monthly period ten Business  
35 Days before the previous Contractor Cycle Key Date through ten Business Days before  
36 the current Contractor Cycle Key Date. ADOT publishes Contractor Cycle Key Dates  
37 annually for the applicable year-long period.

1 **Controlling Work Item** means a work activity in which any delay in its completion will  
2 result in a delay in a Completion Deadline.

3 **Critical Path** means each critical path on the Project Schedule, which ends on the  
4 Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e.  
5 the term shall apply only following consumption of all available Float in the schedule for  
6 Substantial Completion or Final Acceptance, as applicable). The lower case term  
7 "critical path" means the activities and durations associated with the longest chain(s) of  
8 logically connected activities through the Project Schedule with the least amount of  
9 positive slack or the greatest amount of negative slack.

10 **CRM Notes** means the meeting notes from a CRM, which include the date of the CRM,  
11 list of all attendees, issues considered by participants, and related responses given or  
12 decisions made in the CRM.

13 **Curative Documents** means the documents necessary to clear title to a parcel of real  
14 property.

15 **D&C Guaranty** has the meaning set forth in Section 10.4.1 of the Agreement.

16 **D&C Payment Bond** means the bond referred to in Section 10.1.2 of the Agreement.

17 **D&C Performance Bond** means the bond referred to in Section 10.1.1 of the  
18 Agreement.

19 **D&C Period** or **Construction Period** means the period of the Term from the Effective  
20 Date up to the Substantial Completion Date.

21 **D&C Period Noncompliance Event Table** means the Noncompliance Event Table, set  
22 forth in Exhibit 15-1 to the Agreement, that identifies the Noncompliance Events and  
23 corresponding cure periods, if any, that apply during the D&C Period. The D&C Period  
24 Noncompliance Event Table is subject to change in accordance with Section 17.1.2 of  
25 the Agreement.

26 **D&C Price** means the lump sum price for D&C Work set forth in Section 13.1.1 of the  
27 Agreement, as it may be modified from time to time in accordance with the express  
28 provisions of the Agreement.

29 **D&C Work** means all (a) Design Work and Construction Work, including all efforts  
30 necessary or appropriate to achieve Final Acceptance, in accordance with the Technical  
31 Provisions, and (b) Maintenance During Construction in accordance with the Technical  
32 Provisions.

33 **Day** or **day** means calendar day.

34 **DBE Goals** has the meaning set forth in Section 9.2.1 of the Agreement.

1 **DBE/OJT Outreach and Compliance Manager** means the individual described in  
2 Section GP 110.08.2.11 of the Technical Provisions. The DBE/OJT Outreach and  
3 Compliance Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

4 **DBE Monthly Utilization Progress Report** means the report by that name described in  
5 Section 18.02.2 of the DBE Special Provisions.

6 **DBE Special Provisions** means ADOT's provisions regarding DBE utilization for the  
7 Project set forth in Exhibit 7 to the Agreement.

8 **DBE Utilization Plan** means Developer's ADOT-approved plan for meeting the DBE  
9 participation goals, described in Section 9.2.5.2 of the Agreement.

10 **Defect** means a defect, whether by design, construction, installation, damage or wear,  
11 affecting the condition, use, functionality or operation of any Element of the Project,  
12 which would cause or have the potential to cause one or more of the following:

13 (a) A hazard, nuisance or other risk to public or worker health or safety,  
14 including the health and safety of those traveling on the Project;

15 (b) A structural deterioration of the affected Element or any other part of the  
16 Project;

17 (c) Damage to a third party's property or equipment;

18 (d) Damage to the Environment;

19 (e) Failure of the affected Element or any other part of the Project to meet a  
20 requirement of the Contract Documents; or

21 (f) Failure of an Element to meet the Target for a Measurement Record as  
22 set forth in TP Attachment 500-1 of the Technical Provisions.

23 **Delay Costs** means Developer's additional costs attributable to a Relief Event Delay,  
24 which costs are limited to (a) direct costs for the actual idle labor and equipment, (b) the  
25 indirect costs and expenses thereof excluding cost of funds (whether debt or equity),  
26 damages and penalties, and (c) profit thereon, all as calculated pursuant to Exhibit 14 of  
27 the Agreement; provided that for delays to non-Controlling Work Items incident to a  
28 Relief Event Delay, the term Delay Costs does not include any indirect costs, expenses  
29 or profit thereon; provided, further, that, in the event of a Relief Event Delay that is  
30 concurrent with delay for which Developer is responsible under the Contract  
31 Documents, Developer shall not be entitled to Delay Costs to the extent the Developer  
32 is responsible for the delay. Delay Costs do not include any costs that Developer can or  
33 could reasonably mitigate.

34 **Demolition Closeout Documents** means the documents described in Section DR  
35 470.4.7 of the Technical Provisions.

1 **Demolition Completion Notification** means the notification from Developer to ADOT  
2 confirming completion of an instance of demolition as contemplated by Section DR  
3 470.4.7 of the Technical Provisions.

4 **Demolition Photographs** means the photographs described in Section DR 470.4.7 of  
5 the Technical Provisions.

6 **Deputy Maintenance Manager** means the individual described in Section GP  
7 110.08.3.26 of the Technical Provisions.

8 **Design Change** has the meaning set forth in Section GP 110.10.2.8.3 of the Technical  
9 Provisions.

10 **Design Documents** means all drawings (including plans, profiles, cross-sections,  
11 notes, elevations, sections, details and diagrams), specifications, reports, studies,  
12 calculations, electronic files, records and submittals necessary for, or related to, the  
13 design of the Project or the Utility Adjustments in accordance with the Contract  
14 Documents, the Governmental Approvals and applicable Law.

15 **Design Exception** has the meaning as defined in the ADOT Design Exception and  
16 Design Variance Process Guide.

17 **Design Exception and Design Variance Report** means the report described in  
18 Section DR 440.3.5 of the Technical Provisions.

19 **Design Manager** means the individual described in Section GP 110.08.2.3 of the  
20 Technical Provisions.

21 **Design Survey Report** means the report described in, and satisfying the requirements  
22 of, Section DR 410.3.3 of the Technical Provisions.

23 **Design Variance** has the meaning as defined in the ADOT Design Exception and  
24 Design Variance Process Guide.

25 **Design Work** means all Work of design, engineering or architecture for the Project,  
26 Project ROW acquisition or Utility Adjustments.

27 **Detailed Pricing Documents** has the meaning set forth in Section 23.1 of the  
28 Agreement.

29 **Detour Plans** means the plans described in, and satisfying the requirements of,  
30 Section DR 462.3.1.4 of the Technical Provisions.

31 **Developer** means Connect 202 Partners, LLC, a Delaware limited liability company,  
32 together with its permitted successors and assigns.

33 **Developer-Acquired Parcel** means any real property (which term is inclusive of all  
34 estates, easements, leases, and other interests in real property, permanent or

temporary) in the Project ROW or for Replacement Utility Property Interests for which Developer is to perform ROW Services as specified in the Contract Documents, but excluding Developer's Temporary Work Areas.

**Developer Default** has the meaning set forth in Section 19.1.1 of the Agreement.

**Developer-Designated ROW** means any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that Developer determines is necessary or advisable to be acquired for the Project. The term specifically includes (a) any easements required for drainage for the Project, (b) Temporary Construction Easements to the extent located outside of the Schematic ROW and outside of ADOT Additional Property, (c) the necessity to condemn an entire parcel even though only a portion of the parcel is required as Developer-Designated ROW, and (d) any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes (1) Replacement Utility Property Interests, (2) Developer's Temporary Work Areas, and (3) any property within the GRIC lands.

**Developer Intellectual Property** means all Intellectual Property developed by Developer or its Affiliates or Subcontractors either (a) prior to the Effective Date, or (b) independently of the Contract Documents.

**Developer-Related Entity** means:

- (a) Developer;
- (b) Developer's shareholders, partners, joint venturers or members;
- (c) Subcontractors and suppliers;
- (d) Any other Persons performing any of the Work;
- (e) Any other Persons for whom Developer may be legally or contractually responsible; and
- (f) The employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

**Developer Release of Hazardous Materials** means:

- (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Developer-Related Entity;
- (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity, regardless of cause; or

(c) Use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the Contract Documents or any applicable Law or Governmental Approval.

**Developer's Proposal Commitments** means (a) the content of Exhibits 2-3 and 2-5 through 2-9 to the Agreement and (b) any other content of the Proposal as determined in accordance with Section 1.2.4 of the Agreement.

**Developer's Schematic Design** means Developer's conceptual design for the Project set forth in Exhibit 2-1 to the Agreement.

**Developer's Temporary Work Areas** means areas in which Developer carries out, on a temporary basis, Project-specific or Project-related activities in connection with the Work, but not within the Project ROW boundaries identified in the NEPA Approval, such as construction work sites, the collocated office (as described in Section GP 110.05.2 of the Technical Provisions), field office locations (as described in Section GP 110.05.3 of the Technical Provisions), staging areas, storage areas, lay-down areas, earth work material borrow sites, and other locations for the convenience of Developer. "Developer's Temporary Work Areas" do not include Temporary Construction Easements.

**Deviation** means:

(a) Any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions; or

(b) A change in the Work or other requirements of the Contract Documents issued under Section 15.2.8 of the Agreement. Such Deviations include "Design Exceptions" and "Design Waivers."

**Differing Site Conditions** means:

(a) Subsurface or latent conditions encountered within one foot from the actual boring holes identified in the geotechnical reports included in the Reference Information Documents, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or

(b) Subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement.

The term Differing Site Conditions shall specifically exclude:

(i) All such subsurface, latent or surface conditions which (A) were known to Developer prior to the Setting Date, (B) could have been reasonably anticipated to exist by an experienced civil works contractor based on the information contained in the



Reference Information Documents, or (C) would have become known to Developer by undertaking Reasonable Investigation;

(ii) Changes in surface topography;

(iii) Variations in subsurface moisture content and variations in the water table;

(iv) Utility facilities;

(v) Hazardous Materials, including contaminated groundwater;

(vi) Acquisition of real property for drainage purposes; and

(vii) Any conditions which constitute or are caused by a Force Majeure Event.

**Directive Letter** has the meaning set forth in Section 15.3 of the Agreement.

**Director** means the director of the Arizona Department of Transportation, or his or her successor, acting by and under the authority of the laws of the State of Arizona.

**Disadvantaged Business Enterprise** has the meaning set forth in 49 CFR Section 26.5.

**Discriminatory Maintenance Change** means:

(a) Materially more onerous application to Developer or the Project of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the Maintenance Services than the application thereof to other Comparable Facilities, or

(b) Selective application of alterations or changes (including additions) to the Technical Provisions and Safety Standards relating to the Maintenance Services to Developer or the Project and not to other Comparable Facilities.

Notwithstanding the foregoing, such application in response to any negligence, willful misconduct, or breach of applicable Law, Governmental Approval or contract by Developer or any Developer-Related Entity shall not be a Discriminatory Maintenance Change.

**Dispute** means any dispute, Claim, disagreement or controversy between ADOT and Developer concerning their respective rights and obligations under the Contract Documents, including concerning any alleged breach or failure to perform and remedies.

**Dispute Resolution Procedures** means collectively, the procedures established under Section 22.2 of the Agreement.

1 **Document Management Plan** means a plan, as described in, and satisfying the  
2 requirements of, Section GP 110.04.2 of the Technical Provisions.

3 **Drainage Master Plan** means a plan, as described in, and satisfying the requirements  
4 of, Section DR 445.3.2 of the Technical Provisions.

5 **Drainage Report** means a report described in Section DR 445.3.3 of the Technical  
6 Provisions.

7 **Draw Request** means a draw request and certificate described in Section 13.2.2 of the  
8 Agreement.

9 **Drilled Shaft Installation Plan** means a plan, as described in, and satisfying the  
10 requirements of, Section CR 416.3.1 of the Technical Provisions.

11 **Drilled Shaft Load Test Program** means a program, as described in, and satisfying  
12 the requirements of, Section 416.3.1 of the Technical Provisions.

13 **Drilled Shaft Load Test Report** means a report, as described in, and satisfying the  
14 requirements of, Section 416.3.1 of the Technical Provisions.

15 **Drilled Shaft Quality Control Report** means a report as described in, and satisfying  
16 the requirements of, Section CR 416.3.1 of the Technical Provisions.

17 **Effective Date** means the date of the Agreement, or such other date as shall be  
18 mutually agreed upon in writing by ADOT and Developer.

19 **Electronic Document Management System** means the secure data management  
20 system provided by Developer containing all of the data Developer is required to submit  
21 to ADOT in connection with the Work and compatible with data systems, standards and  
22 procedures employed by ADOT, as more particularly described in Section GP 110.04.2  
23 of the Technical Provisions.

24 **Element** means (a) a discrete portion of the Project (e.g., a sign) or (b) a discrete  
25 condition to be Inspected and measured as set forth in TP Attachment 500-1 of the  
26 Technical Provisions.

27 **Emergency** means any unplanned event or condition originating from within or adjacent  
28 to the Project ROW that: (a) presents an immediate or imminent threat to the integrity of  
29 any part of the infrastructure of the Project, to the Environment, to property adjacent to  
30 the Project or to the safety of the public; (b) has caused serious injury to persons, or  
31 significant damage to property or the Environment, within or adjacent to the Project; or  
32 (c) is recognized by the Arizona Department of Public Safety as an emergency.

33 **ENR Construction Cost Index** means the 12-month "Construction Cost Index"  
34 published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY  
35 10121.

1 **Environmental Analysis** means an analysis, as described in, and satisfying the  
2 requirements of, Section CR 417.3.2.1 of the Technical Provisions.

3 **Environmental Approvals** means all Governmental Approvals arising from or required  
4 by any Environmental Law in connection with development of the Project, including;

5 (a) The NEPA Approval;

6 (b) Other approvals and permits required under NEPA; and

7 (c) Any revision, modification, supplement or amendment of the foregoing  
8 approvals and permits.

9 **Environmental Compliance Manager** means the individual described in, and  
10 satisfying the requirements of, Section GP 110.08.2.9 of the Technical Provisions. The  
11 Environmental Compliance Manager is one of the Key Personnel listed in Exhibit 9-2 of  
12 the Agreement.

13 **Environmental Law** means any Law applicable to the Project or the Work regulating or  
14 imposing liability or standards of conduct that pertains to the environment, Hazardous  
15 Materials, contamination of any type whatsoever, or environmental health and safety  
16 matters, and any lawful requirements and standards that pertain to the environment,  
17 Hazardous Materials, contamination of any type whatsoever, or environmental health  
18 and safety matters, set forth in any permits, licenses, approvals, plans, rules,  
19 regulations or ordinances adopted, or other criteria and guidelines promulgated,  
20 pursuant to Laws applicable to the Project or the Work, as such have been or are  
21 amended, modified, or supplemented from time to time (including any present and  
22 future amendments thereto and reauthorizations thereof) including those relating to:

23 (a) The manufacture, processing, use, distribution, existence, treatment,  
24 storage, disposal, generation, and transportation of Hazardous Materials;

25 (b) Air, soil, surface and subsurface strata, stream sediments, surface water,  
26 and groundwater;

27 (c) Releases of Hazardous Materials;

28 (d) Protection of wildlife, Threatened or Endangered Species, sensitive  
29 species, wetlands, water courses and water bodies, historical, archeological, and  
30 paleontological resources, and natural resources;

31 (e) The operation and closure of underground storage tanks;

32 (f) and safety of employees and other persons; and

33 (g) Notification, documentation, and record keeping requirements relating to  
34 the foregoing.

1 Without limiting the above, the term “Environmental Laws” shall also include the  
2 following:

3 (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as  
4 amended;

5 (ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)

6 (iii) Section 4(f) of the U.S. Department of Transportation Act of 1966 (49  
7 U.S.C. § 303(c))

8 (iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act  
9 of 1970 (49 C.F.R. Part 24)

10 (v) The Comprehensive Environmental Response, Compensation, and  
11 Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;

12 (vi) The Solid Waste Disposal Act, as amended by the Resource Conservation  
13 and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);

14 (vii) The Emergency Planning and Community Right to Know Act of 1986 (42  
15 U.S.C. §§ 11001 *et seq.*), as amended;

16 (viii) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

17 (ix) The Federal Water Pollution Control Act, as amended by the Clean Water  
18 Act (33 U.S.C. §§ 1251 *et seq.*);

19 (x) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et*  
20 *seq.*), as amended;

21 (xi) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as  
22 amended;

23 (xii) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*),  
24 as amended;

25 (xiii) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;

26 (xiv) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136  
27 *et seq.*), as amended;

28 (xv) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as  
29 amended;

30 (xvi) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§  
31 7401 *et seq.*), as amended;

32 (xvii) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);

- (xviii) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- (xix) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- (xx) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- (xxi) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- (xxii) General (A.R.S. §49- 101 to 191);
- (xxiii) Water Quality Control (A.R.S. §49-201 to 391);
- (xxiv) Air Quality (A.R.S. §49-401 to 581);
- (xxv) Solid Waste Management (A.R.S. §49-701 to 881);
- (xxvi) Hazardous Waste Disposal (A.R.S. §49 -901 to 971);
- (xxvii) Underground Storage Tank Regulation (A.R.S. §49-1001 to 1091);
- (xxviii) Light Pollution (A.R.S. §49-1101);
- (xxix) Water Infrastructure Finance Program (A.R.S. §49-1201 to 1221); and
- (xxx) Natural Gas Facilities (A.R.S. §49-1301).

**Environmental Management Plan** means the Developer's plan for performing all environmental mitigation measures set forth in the Environmental Approvals, and for complying with all other conditions and requirements of the Environmental Approvals, as more particularly described in Section DR 420.2.3 of the Technical Provisions.

**Environmental Management Program** means the program described in Section DR 420.2.2 of the Technical Provisions.

**Environmentally Sensitive Avoidance Area** means the area to be fenced off during construction and not accessible for any purpose. This geographic area is shown in the Reference Information Documents, in the file named "2015-06 Environmentally Sensitive Avoidance Area GIS Files.zip."

**Environmentally Sensitive Avoidance Area Buffer** means the area in which any construction activity must be monitored by a qualified archaeologist. This geographic area is shown in the References Information Documents, in the file named "2015-06 Environmentally Sensitive Avoidance Area GIS Files.zip." This area will be staked and flagged off for during construction.

1 **Environmentally Sensitive Avoidance Area Protected Air Space** means the air  
2 space within the Environmentally Sensitive Avoidance Area that must be completely  
3 avoided by the Project. This geographic area is shown in the Reference Information  
4 Documents, in the file named "2015-06 Environmentally Sensitive Avoidance Area GIS  
5 Files.zip."

6 **Equipment Demobilization Plan** means the plan described in Section GP 110.05.4.1  
7 of the Technical Provisions.

8 **Equity Member** means: (a) each entity with a direct equity interest in Developer  
9 (whether as a member, partner, joint venture member or otherwise); and (b) each entity  
10 with an indirect interest in Developer through one or more intermediaries.  
11 Notwithstanding the foregoing, if Developer is a publicly traded company, shareholders  
12 with less than a 10% interest in Developer shall not be considered Equity Members.

13 **Erosion Control Coordinator** means the individual described in Section GP  
14 110.08.3.17 of the Technical Provisions.

15 **Error** means an error, omission, inconsistency, inaccuracy, deficiency or other defect.

16 **Event of Default** has the meaning set forth in Section 19.1.3 of the Agreement.

17 **Eviction Recommendation Memorandum** means a written memorandum  
18 recommending that ADOT begin eviction proceedings against a displacee, setting forth  
19 the reasons for the recommendation and the other information described in Section DR  
20 470.4.2H of the Technical Provisions.

21 **Existing Conditions Site Documentation** means the documentation described in  
22 Section GP 110.11.1 of the Technical Provisions.

23 **Existing Utility Property Interest** means any right, title or interest in real property (e.g.,  
24 a fee or an easement) claimed by a Utility Company as the source of its right to  
25 maintain an existing Utility in such real property, which is compensable in eminent  
26 domain.

27 **Extended Occupancy Agreement** means an agreement to permit the seller to occupy  
28 the property after the close of escrow or order of immediate possession in consideration  
29 of paying ADOT a specified amount of rent.

30 **Extra Work** means any Work in the nature of additional work, altered work or deleted  
31 work which is directly attributable to occurrence of a Relief Event and absent the Relief  
32 Event would not be required by the Contract Documents. For clarity, the term "Extra  
33 Work" includes additional work necessary for Developer to obtain Environmental  
34 Approvals, reevaluations, amendments and supplements of the NEPA Approval, and  
35 other Governmental Approvals required under Section 4.3.2 of the Agreement in  
36 connection with a Relief Event; the Term "Extra Work" does not include Relief Event  
37 Delay.

1 **Extra Work Costs** means the incremental increase in Developer's cost of labor,  
2 material, equipment and other direct and indirect costs directly attributable to Extra  
3 Work. Such Extra Work Costs shall be calculated in accordance with Section 1 of  
4 Exhibit 14 (Extra Work Costs and Delay Costs Specifications) to the Agreement.

5 **Falsework Drawings** means the drawings described in Section CR 455.3.3 of the  
6 Technical Provisions.

7 **Federal Requirements** means the provisions required to be part of construction  
8 contracts funded wholly or in part with federal-aid funding or other federal funds or  
9 credit, including the provisions set forth in Exhibit 4 to the Agreement.

10 **Final Acceptance** means the occurrence of all of the events and satisfaction of all of  
11 the conditions set forth in Section 6.6.4.1 of the Agreement, as and when confirmed by  
12 ADOT's issuance of a Certificate of Final Acceptance.

13 **Final Acceptance Deadline** means the deadline for Final Acceptance, which shall be  
14 not later than 180 days after the Substantial Completion Date, unless adjusted by  
15 Supplemental Agreement pursuant to the Agreement.

16 **Final D&C Payment** means payment by ADOT of the final installment of the D&C Price.

17 **Final Design** means, depending on the context: (a) the RFC Submittals; (b) the design  
18 concepts set forth in the RFC Submittals; or (c) the process of development of the RFC  
19 Submittals.

20 **Final Design Documents Submittal** means the design Submittal described in,  
21 satisfying the requirements of, and prepared in accordance with Section GP  
22 110.10.2.7.7 of the Technical Provisions.

23 **Final Design Submittal** means the applicable design Submittal described in, and  
24 satisfying the corresponding requirements of, Section GP 110.10.2.7.5 of the Technical  
25 Provisions.

26 **Final Technical Noise Analysis and Mitigation Report** means the report described in,  
27 and satisfying the requirements of, Section DR 420.3.5 of the Technical Provisions.

28 **Fiscal Year** means the consecutive 12-month period starting on July 1 and ending on  
29 June 30.

30 **Float** means the amount of time that any given activity or logically connected sequence  
31 of activities shown on the Project Schedule may be delayed before it will affect the  
32 Substantial Completion Deadline or Final Acceptance Deadline, as applicable. Such  
33 Float is generally identified as the difference between the early start date and late start  
34 date, or early completion date and late completion date, for activities shown on the  
35 Project Schedule.

1 **Flood Event** means (a) storms and floods for which the Governor of the State has  
2 proclaimed a state of emergency, when the damaged work of the Project is located  
3 within the territorial limits to which such proclamation is applicable, or (b) a water flow in  
4 the Salt River channel at the Project location in excess of 1500 cubic feet per second.

5 **Force Account Work** means Extra Work Costs determined on a force account basis, in  
6 accordance with Section 1.2 of Exhibit 14 of the Agreement.

7 **Force Majeure Event** means the occurrence of any of the following events that (1) is  
8 beyond the reasonable control of Developer, (2) is not attributable to the negligence,  
9 willful misconduct, or breach of applicable Law or contract by any Developer-Related  
10 Entity, and (3) actually, demonstrably, materially and adversely affects performance of  
11 Developer's obligations (other than payment obligations) in accordance with the terms  
12 of the Contract Documents, provided that such events (or the effects of such events)  
13 are not caused, and could not have been avoided by the exercise of caution, due  
14 diligence or reasonable efforts, by any Developer-Related Entity:

15 (a) War (including civil war and revolution), invasion, armed conflict, violent act of  
16 foreign enemy, military or armed blockade, or military or armed takeover of the Project  
17 or the Site, in each case occurring within the State of Arizona;

18 (b) Any act of terrorism, riot, insurrection, civil commotion or sabotage that causes  
19 direct physical damage to, or otherwise directly causes interruption to construction or  
20 direct losses during maintenance of, the Project or the Site;

21 (c) National strikes not specific to Developer, embargoes, acts or omissions of a port  
22 or transportation authority, unavailability or shortages of materials, wars, and currently-  
23 listed events that occur outside of the State that, in each case, directly causes  
24 interruption to construction or direct losses during maintenance of the Project;

25 (d) Nuclear explosion that causes direct physical damage to the Project or the Site,  
26 or radioactive contamination of the Project or the Site;

27 (e) Flood Event, fire, explosion, gradual inundation caused by natural events,  
28 tornado, sinkhole caused by natural events, or landslide caused by natural events, in  
29 each case directly impacting the physical improvements of the Project or performance  
30 of Work at the Site;

31 (f) Any governor-declared Emergency within the limits of the Project ROW, except  
32 one consisting of or arising out of traffic accidents;

33 (g) One or more earthquakes, including all foreshocks and aftershocks, where such  
34 earthquakes include ground shaking, liquefaction, settlement, or ground movements  
35 that directly impact, and cause damage to, temporary or permanent works of the  
36 Project; and

37 (h) A vehicle collision that occurs during the Maintenance Period, the impact of  
38 which causes damage to a bridge structure, noise wall, retaining wall or overhead sign



1 structure of the Project. For the purposes hereof, a “vehicle” has the meaning set forth  
2 in Arizona Revised Statutes Section 28-101, and also means railroad train and aircraft.

3 **Foundation Report** means a report, as described in, and satisfying the requirements  
4 of, Section DR 455.3.1 of the Technical Provisions.

5 **Future Projects List** means the list described in Section GP 110.01.3.2.1 of the  
6 Technical Provisions.

7 **General Engineering Consultant** means the entity, as well as its personnel,  
8 designated in writing by ADOT as its program manager for the Project.

9 **Generally Accepted Accounting Principles** means such accepted accounting  
10 practice as, in the opinion of the accountant, conforms at the time to a body of generally  
11 accepted accounting principles in the United States.

12 **Geometric Drawing** means the drawing described in Section GP 110.10.2.7.3 of the  
13 Technical Provisions.

14 **Geotechnical Engineering Report** means a report, as described in, and satisfying the  
15 requirements of, Section DR 416.3.2 of the Technical Provisions.

16 **Geotechnical Manager** means the individual described in Section GP 110.08.3.10 of  
17 the Technical Provisions.

18 **Geotechnical Software** means the software described in Section DR 416.2.3 of the  
19 Technical Provisions.

20 **Geotechnical Supplement** means a supplement to the applicable Geotechnical  
21 Engineering Report, as more particularly described in Section DR 416.3.2 of the  
22 Technical Provisions.

23 **Good Faith Efforts** means (a) with respect to DBE, the efforts to meet the DBE Goals  
24 required under 49 CFR Part 26, Appendix A, and (b) with respect to OJT, the effort to  
25 meet the OJT Goals required under 23 CFR 230.409(g)(4).

26 **Good Industry Practice** means the exercise of the degree of skill, diligence, prudence,  
27 and foresight which would reasonably and ordinarily be expected from time to time from  
28 a skilled and experienced designer, engineer, constructor or maintenance contractor  
29 seeking in good faith to comply with its contractual obligations, complying with all  
30 applicable Laws and engaged in the same type of undertaking under circumstances and  
31 conditions similar to those within the same geographic area as the Project.

32 **Governmental Approval** means any permit, license, consent, concession, grant,  
33 franchise, authorization, waiver, certification, exemption, filing, lease, registration or  
34 ruling, variance or other approval, guidance, protocol, agreement, mitigation agreement,  
35 or memoranda of agreement/understanding, and any amendment or modification of any  
36 of them, required by or with, or provided by, Governmental Entities, including State,

1 local, or federal regulatory agencies, agents, or employees, which authorize or pertain  
2 to the Work or the Project, but excluding any such approvals given by or required from  
3 any Governmental Entity in its capacity as a Utility Company. Governmental Approvals  
4 include Environmental Approvals.

5 **Governmental Approval Package** means the package described in Section DR  
6 420.2.6.2 of the Technical Provisions.

7 **Governmental Entity** means any federal, state, local or foreign government and any  
8 political subdivision or any governmental, quasi-governmental, judicial, public or  
9 statutory instrumentality, administrative agency, authority, body or entity other than  
10 ADOT.

11 **Guaranteed Obligations** has the meaning set forth in the Guaranty.

12 **Guarantor** means each of the entities that provided a guaranty in the applicable form of  
13 Exhibit 11-1 or Exhibit 11-2 of the Agreement of the obligations of Developer under the  
14 Contract Documents.

15 **Guaranty** means each guaranty executed by a Guarantor guaranteeing the obligations  
16 of Developer under the Contract Documents.

17 **Handback Plan** means the plan for satisfying the Handback Requirements, as more  
18 particularly described in Section 8.11.3 of the Agreement and Section MR 501.2.1 of the  
19 Technical Provisions.

20 **Handback Transition Plan** means the plan for transitioning maintenance of the Project  
21 from Developer to ADOT at the end of the Maintenance Period, as more particularly  
22 described in Section 24.13 of the Agreement and Section MR 501.2.2 of the Technical  
23 Provisions.

24 **Handback Requirements** means the terms, conditions, requirements and procedures  
25 governing the condition in which Developer is to deliver the assets within the  
26 Maintenance Services Limits to ADOT upon expiration or earlier termination of the  
27 Term, as set forth in Section MR 501 of the Technical Provisions.

28 **Hazardous Materials** means any element, chemical, compound, material or substance,  
29 whether solid, liquid or gaseous, which at any time is defined, listed, classified or  
30 otherwise regulated in any way under any Environmental Laws, or any other such  
31 substances or conditions (including mold and other mycotoxins or fungi) which may  
32 create any unsafe or hazardous condition or pose any threat to human health and  
33 safety. The term "Hazardous Materials" includes the following:

34 (a) Hazardous wastes, hazardous material, hazardous substances,  
35 hazardous constituents, and toxic substances or related materials, whether solid, liquid,  
36 or gas, including substances defined as or included in the definition of "hazardous  
37 substance", "hazardous waste", "hazardous material", "extremely hazardous waste",  
38 "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous

1 waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste",  
2 "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or  
3 expression intended to define, list or classify substances by reason of properties  
4 harmful to health, safety or the indoor or outdoor environment (including harmful  
5 properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity,  
6 reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under  
7 any applicable Environmental Laws);

8 (b) Any petroleum, including crude oil and any fraction thereof, and including  
9 any refined petroleum product or any additive thereto or fraction thereof or other  
10 petroleum derived substance; and any waste oil or waste petroleum byproduct or  
11 fraction thereof or additive thereto;

12 (c) Any drilling fluids, produced waters and other wastes associated with the  
13 exploration, development or production of crude oil, natural gas or geothermal  
14 resources;

15 (d) Any flammable substances or explosives;

16 (e) Any radioactive materials;

17 (f) Any asbestos or asbestos-containing materials;

18 (g) Any lead and lead-based paint;

19 (h) Any radon or radon gas;

20 (i) Any methane gas or similar gaseous materials;

21 (j) Any urea formaldehyde foam insulation;

22 (k) Electrical equipment which contains any oil or dielectric fluid containing  
23 regulated levels of polychlorinated biphenyls;

24 (l) Pesticides;

25 (m) Any other chemical, material or substance, exposure to which is  
26 prohibited, limited or regulated by any Governmental Entity or which may or could pose  
27 a hazard to the health and safety of the owners, operators, users or any Persons in the  
28 vicinity of the Project or to the indoor or outdoor environment; and

29 (n) Soil, or surface water or ground water, contaminated with Hazardous  
30 Materials as defined above.

31 **Hazardous Materials Management** means procedures, practices and activities to  
32 address and comply with Environmental Laws and Environmental Approvals with  
33 respect to Hazardous Materials encountered, impacted, caused by or occurring in  
34 connection with the Work, as well as investigation and remediation of such Hazardous

1 Materials. Hazardous Materials Management may include handling, sampling, stock-  
2 piling, containment, storage, backfilling in place, asphalt batching, recycling, treatment,  
3 clean-up, remediation, removal, transportation or off-site disposal of Hazardous  
4 Materials, whichever is the most cost-effective approach authorized under applicable  
5 Law.

6 **Hazardous Materials Management Plan** means the plan prepared by Developer for  
7 the safe handling, storage, treatment or disposal of Hazardous Materials both within and  
8 outside the Project ROW.

9 **Hazardous Materials Manager** means the individual described in Section GP  
10 110.08.3.14 of the Technical Provisions.

11 **Highway Condition Reporting System** means ADOT's web-based central server,  
12 which functions as a multi-agency information sharing system for planned Lane  
13 Closures, special events, Incidents and other traffic restriction advisories for the State's  
14 highway network, including key arterials in the Phoenix metropolitan area. Information  
15 entered in the Highway Condition Reporting System is used to populate the public  
16 website (at <http://www.az511.gov/>) and the 511 phone system.

17 **Hold Off Zone Maps** means the maps described in Section DR 470.4.7 of the  
18 Technical Provisions.

19 **Holidays** means those days defined as legal holidays in Arizona Revised Statutes,  
20 Section 1-301.

21 **Hydraulics Engineer** means the individual described in Section GP 110.08.3.18 of the  
22 Technical Provisions.

23 **Inaccurate Utility Information** means, with respect to any Utility Adjustment, that one  
24 or more of the following circumstances applies:

25 (a) The subject Utility lies underground and both the Utility Information and  
26 public and private records incorrectly indicate that the subject Utility does not exist  
27 anywhere within the boundary lines of the Project ROW;

28 (b) The subject Utility lies underground and the horizontal centerline of the  
29 actual location of the subject Utility lies more than six horizontal feet outside the  
30 horizontal boundary line of the Utility easement, franchise or other right or interest  
31 relating to the occupancy of any real property as shown in the Utility Information and  
32 public and private records, or if no outside boundaries are shown, then by more than ten  
33 horizontal feet from the horizontal centerline as shown in the Utility Information and  
34 public and private records;

35 (c) The subject Utility lies underground and both the Utility Information and  
36 public and private records incorrectly indicate that the subject Utility is abandoned (i.e.,  
37 nonexistent except on paper, or existent but no longer active for any type of Utility use);  
38 or

(d) Both the Utility Information and public and private records fail to indicate that the Utility Company holds or is assumed to hold Prior Rights Documentation with respect to the subject Utility.

If any discrepancy exists between the information provided by one component of the Utility Information or public or private records and that provided by any other component of the Utility Information or public or private utility records, only the more recent information shall be relevant for purposes of this definition.

**Incident** means a localized disruption to the free flow of traffic on or to the safety of users of the Project.

**Indemnified Parties** means ADOT, the State, the Arizona State Transportation Board, the General Engineering Consultant and their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees.

**Independent Quality Firm** means the independent firm identified in the Proposal (or such other firm approved by ADOT in ADOT's sole discretion) responsible for performing independent quality assurance material testing, inspection, audits of the Construction Quality Management Plan, and audits of the Maintenance Quality Management Plan as it relates to Capital Asset Replacement Work. The initial ADOT-approved IQF is Raba Kistner, Inc., a Texas corporation.

**Initial Design Submittal** means the applicable design Submittal described in, and satisfying the requirements of, Section GP 110.10.2.7.4 of the Technical Provisions.

**Inspect** shall mean to perform an Inspection. When used in its lower case spelling, the term "inspect" shall have its plain language meanings.

**Inspection** means a detailed inspection by Developer of a specific Element carried out by duly qualified personnel. When used in its lower case spelling, the term "inspection" shall have its plain language meaning.

**Instructions to Proposers** means the Instructions to Proposers issued by ADOT on June, 12, 2015 as part of the RFP with respect to the Project, including all exhibits, forms and attachments thereto and any subsequent addenda.

**Instrumentation Data** means the data from the monitoring of instrumentation of all geotechnical Work that requires monitoring, as described in Section DR 416.3.3.2 of the Technical Provisions.

**Instrumentation Plan** means the plan described in, and satisfying the requirements of, Section CR 416.3.6 of the Technical Provisions.

**Instrumentation Report** means the report described in, and satisfying the requirements of, Section CR 416.3.6 of the Technical Provisions.

1 **Instruments of Conveyance** means documents evidencing the conveyance of real  
2 property rights to ADOT, including but not limited to deeds, grants of right of way,  
3 easements, and Temporary Construction Easements.

4 **Intellectual Property** means all current and future legal or equitable rights and interests  
5 in know-how, patents (including applications), copyrights (including moral rights),  
6 trademarks (registered and unregistered), service marks, trade secrets, designs  
7 (registered and unregistered), utility models, circuit layouts, plant varieties, business  
8 and domain names, inventions, solutions embodied in technology, and other intellectual  
9 activity, and applications of or for any of the foregoing, subsisting in or relating to the  
10 Project, Project design data or Project traffic data. Intellectual Property includes traffic  
11 management algorithms, and software used in connection with the Project (including  
12 software used for management of traffic on the Project), and software source code.  
13 Intellectual Property is distinguished from physical embodiments and other  
14 documentation that disclose Intellectual Property.

15 **Intelligent Transportation System** means the system to monitor traffic flow, detect  
16 traffic and traffic operational conditions and communicate relevant traffic information to  
17 users of the Project as more particularly described in Section DR 466 of the Technical  
18 Provisions.

19 **Interpretive Engineering Decision** has the meaning set forth in Section 3.9.1 of the  
20 Agreement.

21 **Irrigation Water Use and Conservation Plan** means the plan described in Section DR  
22 450.3.3.1 of the Technical Provisions.

23 **Irrigation Systems Designer** means the individual described in Section  
24 GP 110.08.3.20 of the Technical Provisions.

25 **Issue Resolution Ladder** has the meaning set forth in Section 22.2.1 of the  
26 Agreement.

27 **ITS Certifications** means the certification required by the ADOT *Draft Intelligent*  
28 *Transportation Systems Specifications for South Mountain Freeway* included in the  
29 RIDs.

30 **ITS Connection Request** has the meaning set forth in Section MR 400.2.7 of the  
31 Technical Provisions.

32 **ITS Element Number Request** means the request described in Section DR 466.3.3 of  
33 the Technical Provisions.

34 **ITS Inventory** means the inventory described in Section DR 466.2.3 of the Technical  
35 Provisions.

36 **ITS Master Plan** means a plan described in Section DR 466.3.2 of the Technical  
37 Provisions.

1 **ITS Testing Documentation** means documentation of the ITS test results as identified  
2 in Section CR 466.3.4 of the Technical Provisions.

3 **ITS Training Material** means the training material described in, and satisfying the  
4 requirements of, Section CR 466.3.7 of the Technical Provisions.

5 **Key Personnel** means those individuals appointed by Developer and approved by  
6 ADOT, from time to time, to fill the "Key Personnel" positions identified in  
7 Section GP 110.08.2 of the Technical Provisions. The specific individuals appointed by  
8 Developer and approved by ADOT to initially fill certain of the Key Personnel positions  
9 are identified in Exhibit 9-2 to the Agreement.

10 **Key Subcontract** means any one of the following Subcontracts for Work Developer  
11 causes to be performed:

12 (a) Any Subcontract between a Developer-Related Entity and the Lead  
13 Engineering Firm in respect of the Project;

14 (b) Any Subcontract between a Developer-Related Entity and the  
15 Independent Quality Firm in respect of the Project;

16 (c) All Subcontracts with a single Subcontractor that will be responsible for  
17 20% or more of the Construction Work;

18 (d) All Maintenance Services Subcontracts; and

19 (e) Any Subcontract with a firm, other than the Lead Engineering Firm, that  
20 will provide Acquisition Services or Design Work valued at \$10,000,000.00 or more.

21 The term "Key Subcontracts" shall mean all such Subcontracts in the aggregate or more  
22 than one of such Subcontracts.

23 **Key Subcontractor** means any of the Subcontractors under a Key Subcontract.

24 **Known Cultural Resource Sites** means those specific locations within the Project area  
25 identified in the NEPA Approval that were found to contain cultural resources in class I  
26 and class III surveys conducted prior to issuance of the NEPA Approval.

27 **Known or Suspected Hazardous Materials** means:

28 (a) Hazardous Materials and Recognized Environmental Conditions that are  
29 known or reasonably suspected to exist as of the Setting Date based on information or  
30 analysis contained or referenced in the Reference Information Documents as of the  
31 Setting Date; provided, however, that, with respect to any parcel, neither knowledge nor  
32 reasonable suspicion of Hazardous Materials or Recognized Environmental Conditions  
33 shall be based solely on information or analysis contained or referenced in a Phase 1  
34 Environmental Site Assessment Report unless the Reference Information Documents

also contain a Phase 2 Environmental Site Assessment Report for the same parcel as of the Setting Date;

(b) Aerially deposited lead and all soils containing aerially deposited lead, wherever located in or on the Site, regardless of whether indicated or not indicated in the NEPA Approvals, Reference Information Documents or any other source;

(c) Hazardous Materials that are part of any materials, or are contained in any materials, incorporated into roadway and street structures, improvements and fixtures of any kind, including landscaping, that exist in, on or under the Schematic ROW as of the Setting Date, regardless of whether indicated or not indicated in the NEPA Approval, Reference Information Documents or any other source; and

(d) Asbestos located in any building remaining in the Project ROW at the time the corresponding parcel is turned over to Developer.

**Laboratory Testing Location Information** means the information described in Section CR 420.3.2.2.2 of the Technical Provisions.

**Landform Graphic Layout Artist** means the individual described in Section GP 110.08.3.21 of the Technical Provisions.

**Landscape Architect** means the individual described in Section GP 110.08.3.19 of the Technical Provisions.

**Lane Closure or Closure** means that any traffic lane, ramp, cross road, shoulder or sidewalk is closed or blocked, or that the use thereof is otherwise restricted for any duration.

**Lane Closure Request** means a written request from Developer to ADOT for a Lane Closure.

**Law** means: (a) any law, statute, code, regulation, ordinance, rule or common law; (b) any binding judgment (other than regarding a Claim or Dispute); (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute); (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by ADOT within the scope of its administration of the Contract Documents); or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

**Lead Engineering Firm** means Parsons Brinckerhoff, Inc., a New York corporation.

**Lead Maintenance Firm** means each Subcontractor under a Maintenance Services Subcontract, if any.



1 **Legal Description** means a ROW parcel's legal description meeting the requirements  
2 of Section DR 470.3.1 of the Technical Provisions.

3 **Letter of Acceptance** means a letter from a Utility Company to Developer whereby the  
4 Utility Company accepts from Developer the Record Drawings for the corresponding  
5 Utility Adjustment Work performed by Developer, as described in Section CR 430.3.1.4  
6 of the Technical Provisions.

7 **Letters of Introduction** means the letters described in Section DR 470.3.3 of the  
8 Technical Provisions.

9 **Lien** means any pledge, lien, security interest, mortgage, deed of trust or other charge  
10 or encumbrance of any kind, or any other type of preferential arrangement (including  
11 any agreement to give any of the foregoing, any conditional sale or other title retention  
12 agreement, any lease in the nature of a security instrument and the filing of or  
13 agreement to file any financing statement under the Uniform Commercial Code of any  
14 jurisdiction).

15 **Lighting Design Report** means the report described in, and satisfying the  
16 requirements of, Section DR 460.3.6 of the Technical Provisions.

17 **Liquidated Damages** means the liquidated damages specified in Articles 9 and 20 of  
18 the Agreement, and in any other part of the Agreement.

19 **Load Rating Report** means the report described in, and satisfying the requirements of,  
20 Section DR 455.3.7.2.2 of the Technical Provisions.

21 **Look-Ahead Schedule** means the schedule described in, and satisfying the  
22 requirements of, Section GP 110.06.2.9 of the Technical Provisions.

23 **Loss** or **Losses** means any loss, damage, injury, liability, obligation, cost, response  
24 cost, expense (including attorneys', accountants' and expert witnesses' fees and  
25 expenses (including those incurred in connection with the enforcement of any indemnity  
26 or other provision of the Agreement)), fee, charge, judgment, penalty, fine or third party  
27 claims. Losses include injury to or death of persons, damage or loss of property, and  
28 harm or damage to natural resources.

29 **Maintenance Bonds** means, collectively, the Maintenance Performance Bond and  
30 Maintenance Payment Bond.

31 **Maintenance Draw Request** means a draw request and certificate described in  
32 Section 13.6.1.

33 **Maintenance During Construction** means the maintenance and repair Work in  
34 connection with the Project that Developer is required to perform pursuant to the  
35 Contract Documents prior to Substantial Completion. For clarity, Maintenance During  
36 Construction is included in the D&C Work.

1 **Maintenance Guaranty** has the meaning set forth in Section 10.4.2 of the Agreement.

2 **Maintenance Information System** means the web accessible electronic database that  
3 tracks Developer's performance of Maintenance Services and related information, as  
4 more particularly described in Section MR 400.2.4 of the Technical Provisions.

5 **Maintenance Management Plan** means the plan prepared by Developer which defines  
6 the process and procedures for the maintenance of the Project for the Maintenance  
7 Period as more particularly described in Section 8.9 of the Agreement and Section MR  
8 400.2.1 of the Technical Provisions.

9 **Maintenance Manager** means the individual described in Section GP 110.08.2.10 of  
10 the Technical Provisions. The Maintenance Manager is one of the Key Personnel listed  
11 in Exhibit 9-2 of the Agreement.

12 **Maintenance NTP** means a notice issued or deemed issued by ADOT to Developer  
13 authorizing Developer to proceed with the Maintenance Services.

14 **Maintenance Payment Bond** has the meaning set forth in Section 10.2.2 of the  
15 Agreement.

16 **Maintenance Performance Bond** has the meaning set forth in Section 10.2.1 of the  
17 Agreement.

18 **Maintenance Period** means the period beginning on the Substantial Completion Date  
19 and ending 30 years after the first to occur of (a) the Substantial Completion Date or  
20 (b) the Substantial Completion Deadline, as such deadline may be extended by Relief  
21 Events.

22 **Maintenance Period Noncompliance Event Table** means the Noncompliance Event  
23 Table, set forth in Exhibit 15-2 to the Agreement, that identifies the Noncompliance  
24 Events and corresponding cure periods, if any, that apply during the Maintenance  
25 Period. The Maintenance Period Noncompliance Event Table is subject to change in  
26 accordance with Section 17.1.2 of the Agreement.

27 **Maintenance Price** means the price for all Maintenance Services to be performed  
28 during the Maintenance Period as set forth in Section 13.5.1 of the Agreement, as it may  
29 be modified from time to time in accordance with the express provisions of the  
30 Agreement.

31 **Maintenance QC Manager** means the individual described in Section GP 110.08.3.6 of  
32 the Technical Provisions.

33 **Maintenance Quality Management Plan** means the plan described in, and satisfying  
34 the requirements of, Section GP 110.07.2.1.4 of the Technical Provisions.

1 **Maintenance Safety Management Plan** means the plan for safety management with  
2 respect to the Maintenance Services, as more particularly described in  
3 Section MR 400.2.1.1 of the Technical Provisions.

4 **Maintenance Services** means any and all management, administration, maintenance,  
5 repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and  
6 replacement, including Routine Maintenance, Capital Asset Replacement Work and  
7 Handback Work, to be performed by Developer in connection with the Project during the  
8 Maintenance Period.

9 **Maintenance Services Conditions Precedent** means the conditions precedent, set  
10 forth in Section 6.6.3 of the Agreement, to the commencement of the Maintenance  
11 Services.

12 **Maintenance Services Limits** shall mean the limits of the Project ROW, excluding  
13 areas ADOT will maintain as defined or depicted in the Technical Provisions, and  
14 excluding, commencing at such time as the third party maintenance commences, areas  
15 or specific improvements that third parties agree to maintain as stated in the applicable  
16 Third-Party Agreements.

17 **Maintenance Services Subcontract** means a Subcontract, if any, between a  
18 Developer-Related Entity and a Subcontractor for the performance of:

19 (a) At least 50% of the aggregate value of the Maintenance Services  
20 (excluding Capital Asset Replacement Work and Handback Requirements Work); or

21 (b) Capital Asset Replacement Work or Handback Requirements Work.

22 Aggregate value shall be determined by comparing the sum of the unescalated Routine  
23 Maintenance Payments to the unescalated pricing sum under the Subcontract.

24 **Maintenance Unit Device Decal Request** means Developer's written request to ADOT  
25 for unit device decals, as described in Section CR 460.3.4 of the Technical Provisions.

26 **Major Lane Closure Package** means the Submittal package described in, and  
27 satisfying the requirements of, Section DR 462.3.3.1 of the Technical Provisions.

28 **Materials Design Report** means a report described in Section DR 419.3.6 of the  
29 Technical Provisions.

30 **Maximum Allowable Cumulative Draw** means the schedule of maximum cumulative  
31 progress payments of the D&C Price set forth in Exhibit 6 of the Agreement, as the  
32 same may be amended from time to time.

33 **Measurement Record** means, for each Element, the measurement record set forth in  
34 the column headed "Measurement Record" in TP Attachment 500-1 of the Technical  
35 Provisions.

1 **Meeting Notes** means the notes that Developer records from Project-related meetings  
2 Developer attends, as described in Section GP 110.02 of the Technical Provisions.

3 **Meeting Notice** has the meaning set forth in Section GP 110.02 of the Technical  
4 Provisions.

5 **Meeting Schedules and Agendas** has the meaning set forth in Section GP 110.02 of  
6 the Technical Provisions.

7 **MIS Architecture** has the meaning set forth in Section MR 400.2.4.2 of the Technical  
8 Provisions.

9 **Mockups** means the mockups described in, and satisfying the requirements of, Section  
10 CR 450.3.1.1 of the Technical Provisions.

11 **Monthly Disbursement** has the meaning set forth in Section 13.5.5 of the Agreement.

12 **Monthly Maintenance Services Report** means the report described in Section MR  
13 400.3.4A of the Technical Provisions.

14 **Monthly Progress Report** means the report described in Section GP 110.06.2.8 of the  
15 Technical Provisions.

16 **Monthly Progress Schedule** means the schedule consistent with the Completion  
17 Deadlines, submitted by Developer as a condition of NTP 2, setting forth the approved  
18 schedule of Work on a monthly basis against which any subsequent schedule  
19 amendments are tracked, as more particularly described in Section GP 110.06.2.7 of  
20 the Technical Provisions.

21 **Monthly Safety Report** means the report described in Section GP 110.09.2.1.11.2 of  
22 the Technical Provisions.

23 **MOT Task Force** means the task force described in, and satisfying the requirements of,  
24 Section DR 462.2.2 of the Technical Provisions.

25 **MOT Task Force Invitees List** means the list described in Section GP 110.02.6 of the  
26 Technical Provisions.

27 **MSE Wall Drawings** means the drawings described in Section CR 455.3.2 of the  
28 Technical Provisions.

29 **Necessary Schematic ROW Change** means real property (which term is inclusive of  
30 all permanent estates and interests in real property), improvements and fixtures located  
31 outside the Schematic ROW that must be permanently acquired in order for Developer  
32 to deliver the Basic Configuration and satisfy the requirements of the Contract  
33 Documents. A Necessary Schematic ROW Change arises only where indicated in  
34 Section 14.4.1.1 of the Agreement.

1 **NEPA Approval** means the South Mountain Freeway (Loop 202), Interstate 10  
2 (Papago Freeway) to Interstate 10 (Maricopa Freeway), Record of Decision, issued by  
3 the Federal Highway Administration on March 5, 2015.

4 **NEPA Approval Package** means the package described in, and satisfying the  
5 requirements of, Section DR 420.2.6.1 of the Technical Provisions.

6 **NESHAP Notification** means both the NESHAP notification (based on the presence of  
7 any regulated asbestos material, if applicable) required by 40 C.F.R. Section 61.145,  
8 and the NESHAP Notification for Renovation and Demolition Activities, Arizona  
9 Department of Transportation Facilities.

10 **Network Administration Plan** means the plan described in, and satisfying the  
11 requirements of, Section GP 110.05.4.2 of the Technical Provisions.

12 **Node Building Access Request** means the notice from Developer to ADOT requesting  
13 access to a node building and satisfying the requirements of Section CR 466.3.2.6 of  
14 the Technical Provisions.

15 **NOI** means the ADEQ form that requests coverage under the AZPDES stormwater  
16 construction general permit.

17 **Noncompliance Charges** means the liquidated amounts specified in Section 20.4 of  
18 the Agreement.

19 **Noncompliance Event** means any Developer breach or failure to perform any one of  
20 the obligations set forth in the Noncompliance Event Tables.

21 **Noncompliance Event Tables** means, collectively, the D&C Period Noncompliance  
22 Event Table and Maintenance Period Noncompliance Table, as these tables may be  
23 revised from time to time in accordance with Section 17.1.2 of the Agreement.

24 **Noncompliance Points** means the point(s) ADOT may assess to Developer for the  
25 occurrence of Noncompliance Events, in accordance with Section 20.4 of the  
26 Agreement and the D&C Period Noncompliance Event Table or Maintenance Period  
27 Noncompliance Event Table, as applicable.

28 **Non-Conformance Report** has the meaning set forth in Section GP 110.07.2.1 of the  
29 Technical Provisions.

30 **Nonconforming Work** means Work that does not conform to the requirements of the  
31 Contract Documents, the Governmental Approvals, applicable Law or the Design  
32 Documents.

33 **Non-Discriminatory Maintenance Change** means any alteration or change (including  
34 addition) to provisions in the Technical Provisions and Safety Standards that relate to  
35 the Maintenance Services and are of general application to Comparable Facilities.  
36 Such alterations or changes include revisions to manuals, publications and guidelines,

1 adoption of new manuals, publications and guidelines, changed, added or replacement  
2 standards, criteria, requirements, conditions, procedures and specifications, including  
3 Safety Standards that relate to the Maintenance Services and are of general application  
4 to Comparable Facilities.

5 **Non-Maintained Elements** means those Elements constructed by Developer which are  
6 (a) located outside of the Maintenance Services Limits or (b) specifically stated in the  
7 Contract Documents to be treated as Non-Maintained Elements, even if located inside  
8 the Maintenance Services Limits.

9 **Notice of Partial Termination for Convenience** means written notice issued by ADOT  
10 to Developer terminating part of the Work of Developer for convenience under  
11 Section 24.1 of the Agreement.

12 **Notice of Termination** means the ADEQ form that terminates coverage under the  
13 AZPDES stormwater construction general permit.

14 **Notice of Termination for Convenience** means written notice issued by ADOT to  
15 Developer terminating the Work of Developer for convenience under Section 24.1 of the  
16 Agreement.

17 **Notification** means any notice to Developer's Maintenance Manager or Deputy  
18 Maintenance Manager which is posted in the Management Information System. In the  
19 case of an Emergency, such notice shall be by any effective means.

20 **Noxious and Invasive Species Control Plan** means the plan described in Section DR  
21 450.2.5 of the Technical Provisions.

22 **NTP 1** means a written notice issued by ADOT to Developer authorizing Developer to  
23 proceed with the portion of the Work described in Section 7.3 of the Agreement.

24 **NTP 2** means a written notice issued by ADOT to Developer pursuant to Section 7.4 of  
25 the Agreement authorizing Developer to proceed with design and construction of the  
26 Project, except construction or other ground-disturbing activities in the Center Segment.

27 **NTP 3** means a written notice issued by ADOT to Developer pursuant to Section 7.7 of  
28 the Agreement authorizing Developer to proceed with construction and other ground-  
29 disturbing activities of the Center Segment.

30 **NTP 3 Window** means the period of time commencing March 5, 2018, inclusive, and  
31 ending May 5, 2018, inclusive.

32 **OJT Goals** has the meaning set forth in Section 9.3.1 of the Agreement.

33 **OJT Monthly Progress Report** means the report by that name described in Section  
34 7.0 of the OJT Special Provisions.

35 **OJT Schedule** has the meaning set forth in Section 7.0 of the OJT Special Provisions.

1 **OJT Special Provisions** means ADOT's provisions regarding on-the-job training for the  
2 Project set forth in Exhibit 8 to the Agreement.

3 **OJT Trainee Status Report** means the report by that name described in Section 7.0 of  
4 the OJT Special Provisions.

5 **OJT Trainee** has the meaning set forth in Section 2.01 of the OJT Special Provisions.

6 **OJT Utilization Plan** means Developer's ADOT-approved plan for meeting the OJT  
7 Goals, described in Section 9.3.3 of the Agreement.

8 **Open Book Basis** means providing ADOT all underlying assumptions and data,  
9 documents and information associated with pricing or compensation (whether of  
10 Developer or ADOT) or adjustments thereto, including assumptions as to costs of the  
11 Work, Extra Work Costs, Delay Costs, schedule, composition of equipment spreads,  
12 equipment rates (including rental rates), labor rates and benefits, productivity,  
13 estimating factors, design and productivity allowance, contingency and indirect costs,  
14 risk pricing, discount rates, interest rates, inflation and deflation rates, insurance rates,  
15 bonding rates, letter of credit fees, overhead, profit and other items reasonably required  
16 by ADOT to satisfy itself as to the validity or reasonableness of the amount.

17 **Open Trench Safety and Security Plan** means the plan described in Section  
18 GP 110.09.2.2 of the Technical Provisions.

19 **Original ROW Acquisition Documents** mean any signed original document relating to  
20 the acquisition of ROW.

21 **Oversight** means monitoring, inspecting, sampling, measuring, spot checking,  
22 attending, observing, testing, investigating and conducting any other oversight  
23 respecting any part or aspect of the Project or the Work, including all the activities  
24 described in Section 3.6.2 of the Agreement.

25 **Owner Verification** means sampling and testing performed by ADOT or ADOT's  
26 representatives to verify that the Project is constructed in compliance with the Contract  
27 Documents.

28 **Owner Verification Testing and Inspection Plan** has the meaning as set forth in  
29 Section 7 of TP Attachment 110-2 of the Technical Provisions.

30 **Partial Termination for Convenience** means a partial termination of the Agreement  
31 made pursuant to Section 24.1 of the Agreement.

32 **Parties** means Developer and ADOT, collectively.

33 **Partnering Meetings** has the meaning set forth in Section 22.1.1.1 of the Agreement.

34 **Party** means Developer or ADOT, as the context may require.

1 **Paint Draw Downs** means the paint samples described in Section CR 450.3.1.2 of the  
2 Technical Provisions.

3 **Pavement Design Summary** means the summary described in Section DR 419.3.5 of  
4 the Technical Provisions.

5 **Pavement Mix Design** means the Shop Drawings and Working Drawings that specify  
6 the components required to construct the pavement and comply with the Contract  
7 Documents.

8 **Paving Plan** means the plan described in, and satisfying the requirements of, Section  
9 CR 419.3.1 of the Technical Provisions.

10 **Payment Submittal** means a Submittal documenting payments for which ADOT is  
11 responsible in connection with the Project's ROW acquisition activities, as described in,  
12 and satisfying the requirements of, Section DR 470.4.4 of the Technical Provisions.

13 **Pedestrian Access Modification/Closure Request** means the request described in  
14 Section DR 462.3.1.3 of the Technical Provisions.

15 **Performance Requirements** means, for each Element of the Project, the requirements  
16 set forth in TP Attachment 500-1 of the Technical Provisions under the heading  
17 "Performance Requirements".

18 **Permitted Closure** means:

19 (a) A Lane Closure due to an ADOT-Directed Change, provided Developer is  
20 using commercially reasonable efforts to: (i) mitigate the impact of such ADOT-Directed  
21 Change; (ii) reopen the affected segment to traffic; and (iii) minimize the impact of  
22 Developer's activities and the Closure to traffic flow;

23 (b) A Lane Closure specified, caused or ordered by, and continuing only for  
24 so long as required by, ADOT or any Governmental Entity, or a Utility Company  
25 performing work under a permit issued by ADOT, except to the extent such Lane  
26 Closure is the result of the negligence, willful misconduct, or breach of applicable Law  
27 or contract, by Developer or any Developer-Related Entity;

28 (c) A Lane Closure required due to a Relief Event; or

29 (d) A Lane Closure that does not trigger Liquidated Damages under Section  
30 20.2 or 20.3 of the Agreement (i.e., at times permitted under Section DR 462.3 or MR  
31 400.2.10 of the Technical Provisions).

32 **Persistent Developer Default** has the meaning set forth in Section 17.4.1 of the  
33 Agreement.



1 **Person** means any individual, corporation, joint venture, limited liability company,  
2 company, voluntary association, partnership, trust, unincorporated organization or  
3 Governmental Entity.

4 **Phase I Environmental Site Assessment Report** means a report, as described in,  
5 and satisfying the requirements of, Section DR 470.3.4 of the Technical Provisions.

6 **Phase II Environmental Site Assessment Report** means a report, as described in,  
7 and satisfying the requirements of, Section DR 470.3.4 of the Technical Provisions.

8 **Phasing and Construction Sequence Report** means the report described in, and  
9 satisfying the requirements of, Section DR 462.3.4 of the Technical Provisions.

10 **Photometric Analysis Strip Map** means the map described in, and satisfying the  
11 requirements of, Section DR 460.3.6 of the Technical Provisions.

12 **Planned Maintenance Services Schedule** means the schedule described in Section  
13 MR 400.3.4D of the Technical Provisions.

14 **Plans** means the plans described in, and satisfying the requirements of, Section  
15 GP 110.10.2.7.1 of the Technical Provisions.

16 **Plant Inventory** means the inventory of plants described in, and satisfying the  
17 requirements of, Section DR 450.2.3 of the Technical Provisions.

18 **Plating Report** means the report described in, and satisfying the requirements of,  
19 Section DR 450.2.6 of the Technical Provisions.

20 **Postal Service Parcel** has the meaning set forth in Section 5.8.3.2 of the Agreement.

21 **Preliminary Project Baseline Schedule** means the time-scaled, Critical Path network  
22 that depicts Project sections, Project milestones, and subordinate activities and their  
23 respective durations, sequencing, and interrelationships that represent Developer's  
24 Work plan for designing, constructing, and completing the Project, attached as  
25 Exhibit 2-2 to the Agreement.

26 **Price** means either or both of the D&C Price and the Maintenance Price, as applicable.

27 **Prime Rate** means the prime rate as published from time to time by the board of  
28 governors of the Federal Reserve System in statistical release H.15 or any publication  
29 that may supersede it.

30 **Principal Investigator** means the individual described in, and satisfying the  
31 requirements of, Section GP 110.08.3.15 of the Technical Provisions.

32 **Prior Rights Documentation** means documents showing that the Utility Company's  
33 facility predates the acquisition of the property for street or highway purposes, or that it  
34 occupies an easement or other compensable land right. Such documents provide

1 verification that the Utility Company is entitled to compensation for the cost of  
2 Adjustments required to accommodate the Project.

3 **Professional Engineer** means a person who has been granted registration in one or  
4 more branches of engineering by the Arizona State Board of Technical Registration,  
5 and is authorized to practice professionally in the State of Arizona. If a branch of  
6 engineering is included in the title, such as Professional Civil Engineer, registration in  
7 that branch shall be required.

8 **Professional Services** means all Work performed under the Agreement other than  
9 Construction Work and Routine Maintenance, including the following services and  
10 Work:

- 11 (a) Design and engineering;
- 12 (b) Utility Adjustment design;
- 13 (c) Environmental permitting and compliance;
- 14 (d) Public involvement;
- 15 (e) ROW Services;
- 16 (f) Surveying; and
- 17 (g) Independent quality services.

18 **Professional Services Quality Management Plan** means the plan described in, and  
19 satisfying the requirements of, Section GP 110.07.2.1.2 of the Technical Provisions.

20 **Professional Services Quality Manager** means the individual filling the position with  
21 the responsibility to cause the methods and procedures contained in the ADOT-  
22 approved Professional Services Quality Management Plan to be implemented and  
23 followed by Developer's Professional Services staff in the performance of the Work, as  
24 more particularly described in Section GP 110.08.3.1 of the Technical Provisions.  
25 These methods and procedures include, among others, procedures to ensure all design  
26 products are accurate and checked before release. The individual filling this position  
27 shall have the authority to stop Work and shall be collocated whenever design activities  
28 are being performed, including design activities related to field design changes.

29 **Project** means the transportation facilities and all related structures, improvements and  
30 systems to be developed, designed, constructed, operated and maintained, or any of  
31 the foregoing, pursuant to the terms of the Contract Documents, as more particularly  
32 described in TP Attachment 110-1 of the Technical Provisions; provided, however, that,  
33 from and after the Substantial Completion Date, "Project" does not include the Non-  
34 Maintained Elements for purposes of any provision of the Contract Documents relating  
35 to Maintenance Services, except to the extent of Work required for Final Acceptance,

1 the Warranty and the plant establishment period for the Non-Maintained Elements.  
2 "Project" does not include Developer's Temporary Work Areas.

3 **Project Administration Chapter** means the chapter of the Project Management Plan  
4 covering Project administration, as more particularly described in Section GP 110.04.1  
5 of the Technical Provisions.

6 **Project Baseline Schedule** means the schedule, consistent with the Completion  
7 Deadlines, submitted by Developer and approved by ADOT as a condition to issuance  
8 of NTP 2, setting forth the schedule of Work against which any subsequent schedule  
9 amendments are tracked, as more particularly described in Section GP 110.06.2.6 of  
10 the Technical Provisions.

11 **Project Intellectual Property** means all Proprietary Intellectual Property, Developer  
12 Intellectual Property and Third Party Intellectual Property incorporated into the Project.

13 **Project Management Plan** means the document submitted by Developer and approved  
14 by ADOT containing the component parts, plans and documentation described in  
15 Section GP 110.04 of the Technical Provisions.

16 **Project Manager** means the individual described in Section GP 110.08.2.1 of the  
17 Technical Provisions. The Project Manager is one of the Key Personnel listed in  
18 Exhibit 9-2 of the Agreement.

19 **Project ROW** or **Project Right-of-Way** means, except as provided below, any real  
20 property (which term is inclusive of all estates, easements, leases and other interests in  
21 real property, permanent or temporary) located:

22 (a) Within the lines delineating the outside boundaries of the Project as set  
23 forth in the Schematic ROW or as adjusted from time to time in accordance with the  
24 Contract Documents (including adjustments for ADOT Additional Properties, Developer-  
25 Designated ROW and avoided parcels or partial parcels, in whole or in part); or

26 (b) Outside such lines and required for performance of the Work or  
27 construction, operation or maintenance of the Project, including Temporary Construction  
28 Easements outside such lines during their terms, and easements and other property  
29 interests for the Project and other components and features required for roadway  
30 function or environmental compliance.

31 The term Project ROW or Project Right-of-Way specifically includes all air space,  
32 surface rights and subsurface rights within the boundaries of the Project ROW or  
33 Project Right of Way. The term specifically excludes:

34 (i) Real property for Developer's Temporary Work Areas outside the  
35 boundaries set forth in the Schematic ROW;

36 (ii) Replacement Utility Property Interests; and

(iii) After Final Acceptance, any real property for city streets or other areas included in the Construction Work that are outside the Maintenance Services Limits.

**Project ROW Status Report** means the report described in Section DR 470.2.3 of the Technical Provisions.

**Project Schedule** means one or more, as applicable, of the logic-based critical path schedules (the Project Baseline Schedule, the Monthly Progress Schedule and the Recovery Schedule) for all D&C Work leading up to and including Final Acceptance, and for tracking the performance of such D&C Work, as the same may be revised and updated from time to time in accordance with Section GP 110.06 of the Technical Provisions and the Maintenance Work Schedule (as revised in accordance with the Agreement).

**Project Segment** means the segments identified in the Segment Limits Map.

**Proposal** means Developer's original Proposal submitted in response to the RFP, including any clarifications.

**Proposal Due Date** means November 2, 2015, the deadline for submission of the Proposal to ADOT under the RFP.

**Proposer** means each entity that was shortlisted based on ADOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on October 15, 2014, as amended.

**Proprietary Intellectual Property** means all Intellectual Property created, authored or invented under or for the purposes of a Proposal, the Contract Documents or the Project.

**Protection in Place** means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

**Public Involvement Plan** means Developer's plan described in, and satisfying the requirements of, Section CR 425.2.2 of the Technical Provisions.

**Public Relations Officer** means the individual described in Section GP 110.08.2.6 of the Technical Provisions. The Public Relations Officer is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

**Public Release Notification** means all exhibits, photographs, data, materials, etc. that Developer provides to ADOT to notify the public.

**Public Records Act** means Arizona Revised Statutes, Title 39, Chapter 1, Article 2.

**Pull Box Location Report** means the report described in Section CR 460.3.4 of the Technical Provisions.

**Punch List** means the itemized list of the Work that remains to be completed after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

**Qualified Biologist** means the individual described Section GP 110.08.3.16 of the Technical Provisions.

**Quality Acceptance** means all planned and systematic actions performed by the IQF, as defined in the Contract Documents for their portion of the Acceptance Program.

**Quality Management Plan** means, collectively, the Quality Management Plan General Requirements, the Design Quality Management Plan, the Construction Quality Management Plan, and the Maintenance Quality Management Plan included in the Project Management Plan and more fully described in Section GP 110.07.2.1 of the Technical Provisions.

**Quality Management Plan General Requirements** means Volume 1 of the QMP, as described in Section GP 110.07.2.1.1 of the Technical Provisions.

**Quality Manager** means the individual described in Section GP 110.08.2.4 of the Technical Provisions. The Quality Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

**Quality Records** means the records and documentation described in Section GP 110.07.2.1.1 of the Technical Provisions.

**Railroad Right-of-Entry Agreement** means the agreement described in Section DR 436.2.4 of the Technical Provisions.

**Railroad Submittal Package** means a package, including documents and information, covering a proposed railroad crossing as more particularly described in Section DR 436.3.1 of the Technical Provisions.

**Rainfall Records** means the records described in Section CR 420.3.2.5.1 of the Technical Provisions.

**Ramp Meter Warrant Analysis** means the analysis described in Section DR 466.3.3.5 of the Technical Provisions.

**Reasonable Investigation** means the following activities performed by appropriate, qualified professionals prior to the Setting Date:

- (a) Review and analysis of all Technical Provisions;

1 (b) Visit and visual, non-intrusive inspection of the Site and surrounding  
2 locations, except areas to which access rights have not been made available by the  
3 Setting Date;

4 (c) Review and analysis of all Reference Information Documents (including  
5 the documents identified in the definition of Known or Suspected Hazardous Materials),  
6 and of other available public and private records;

7 (d) Review and analysis of the NEPA Approval;

8 (e) Reasonable inquiry with Utility Companies, including requests for and  
9 review of Utility plans provided by Utility Companies;

10 (f) Reasonable inquiry with railroads, including review of the Schematic  
11 Design for the UPRR railroad crossing;

12 (g) Reasonable inquiry with Governmental Entities that issue Environmental  
13 Approvals for the Project or the Work;

14 (h) Review and analysis of Laws applicable to the Project or the Work as of  
15 the Setting Date; and

16 (i) Investigation and review of available public and private records.

17 **Recognized Environmental Condition** has the meaning set forth in ASTM E-1527-05.

18 **Record Drawings** means construction drawings and related documentation revised to  
19 show significant changes made during the construction process; usually based on  
20 marked-up RFC Submittals furnished by Developer; also known as as-built plans, and  
21 more fully described in Section GP 110.10.2.8.4 of the Technical Provisions.

22 **Recovery Schedule** means the schedule Developer is required to provide under  
23 Section 7.5 of the Agreement and more fully described in Section GP 110.06.2.10 of the  
24 Technical Provisions.

25 **Reference Information Documents** means those documents listed in Exhibit 3 to the  
26 Agreement. Except as expressly provided in the Contract Documents, the Reference  
27 Information Documents are not considered Contract Documents and were provided to  
28 Developer for informational purposes only and without representation or warranty by  
29 ADOT.

30 **Related Transportation Facility** means all existing and future highways, streets and  
31 roads, including upgrades and expansions thereof, that are or will be adjacent to,  
32 connecting with or crossing under or over the Project.

33 **Release of Hazardous Materials** means any spill, leak, emission, release, discharge,  
34 injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil,

1 air, water, groundwater or environment, including any exacerbation of an existing  
2 release or condition of Hazardous Materials contamination.

3 **Relief Event** means any of the following events, subject to the requirements, limitations,  
4 deductibles and the duty to prevent and to mitigate consequences that are set forth in  
5 the Agreement for such events:

6 (a) ADOT's failure to perform or observe any of its material covenants or  
7 obligations under the Contract Documents, including unreasonable failure to issue a  
8 certificate of Substantial Completion or Final Acceptance after Developer fully satisfies  
9 all applicable conditions and requirements for obtaining such a certificate (except where  
10 such failure is within another defined Relief Event);

11 (b) ADOT-Directed Change;

12 (c) Non-Discriminatory Maintenance Change;

13 (d) Safety Compliance Orders;

14 (e) ADOT-Caused Delay;

15 (f) Force Majeure Event;

16 (g) Utility Company Delay;

17 (h) Inaccurate Utility Information that directly affects the Construction Work,  
18 including Construction Work on ADOT Additional Properties, subject to the following  
19 exclusions:

20 (i) Excluding Construction Work on any Developer-Designated ROW;

21 (ii) Excluding Inaccurate Utility Information with respect to Service  
22 Lines; and

23 (iii) Excluding where the existence of a Utility in the correct location or  
24 size, or of a Utility Company's Prior Rights Documentation, as applicable, was known to  
25 Developer as of the Setting Date, or would have become known to Developer as of the  
26 Setting Date by undertaking a Reasonable Investigation with Utility Companies prior to  
27 the Setting Date, including by requesting and reviewing Utility plans provided by Utility  
28 Companies;

29 (i) Discovery at, near or on the Project ROW, excluding Developer-  
30 Designated ROW and Replacement Utility Property Interests, of any Hazardous  
31 Materials (including ADOT Release(s) of Hazardous Material), excluding Developer  
32 Releases of Hazardous Materials and Known or Suspected Hazardous Materials;

33 (j) Any sudden spill of Hazardous Material by ADOT or a third party who is  
34 not acting in the capacity of a Developer-Related Entity, which (i) occurs after the

Setting Date, (ii) is required to be reported to a Governmental Entity, and (iii) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment or remediation;

(k) Discovery on or under the Project ROW, excluding Developer-Designated ROW and Replacement Utility Property Interests, of any archaeological, paleontological or cultural resources, excluding any such resources at the Known Cultural Resource Sites;

(l) Differing Site Conditions;

(m) Discovery at, near or on the Project ROW, excluding Developer-Designated ROW and Replacement Utility Property Interests, of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), excluding any such presence of the American Bald Eagle or other species known to Developer prior to the Setting Date or that would become known to Developer by undertaking Reasonable Investigation;

(n) Change in Law or Change in Adjustment Standards, except a Change in Adjustment Standards that is consistent with the terms and limitations, if any, on changes in Adjustment Standards set forth in any Utility Agreement to which Developer is a party;

(o) Issuance of a temporary restraining order, preliminary injunction or other form of interlocutory relief by a court of competent jurisdiction that prohibits prosecution of any portion of the Work, except if based on the wrongful act or omission of any Developer-Related Entity;

(p) Issuance of a rule, order or directive from the U.S. Department of Homeland Security or comparable State agency regarding specific security threats to the Project or the region in which the Project is located or which the Project serves, to the extent such rule, order or directive requires specific changes in Developer's normal design, construction or maintenance procedures in order to comply;

(q) Any Necessary Schematic ROW Change; or

(r) Issuance of NTP 3 beyond the NTP 3 Window.

**Relief Event Delay** means a delay to a Controlling Work Item, after consumption of all Float available pursuant to Section 7.10.2 of the Agreement, as a direct result of a Relief Event that could not be avoided by Developer. For clarity, Relief Event Delay includes such delays to Controlling Work Items directly attributable to Developer's obtaining Environmental Approvals, reevaluations, amendments and supplements of the NEPA Approval, and other Governmental Approvals in connection with a Relief Event, as required under Section 4.3.2 of the Agreement. Relief Event Delay does not include delay due to loss, damage or destruction described in Section 11.3.7 of the Agreement.



1 **Relief Event Notice** means the Notice required to be provided by Developer under  
2 **Section 14.1.2** of the Agreement.

3 **Relief Request** has the meaning set forth in **Section 14.1.3** of the Agreement.

4 **Relocation Agent** means the individual described in Section GP 110.08.23 of the  
5 Technical Provisions.

6 **Relocation Entitlement Claim Form** means the form by such name contained in the  
7 ADOT ROW Policy and Procedure Manual, Exhibit 14.20.

8 **Relocation Supplement** means a payment to a person displaced from a dwelling  
9 actually owned or occupied by the displaced person as authorized by A.R.S. section 28-  
10 7144 and/or 28-7146.

11 **Remaining Useful Life** means, for an Element, the period remaining until the Element  
12 will next require reconstruction, rehabilitation, restoration, renewal or replacement.

13 **Remaining Useful Life Report** means the report described in **Sections 8.11.5.4** and  
14 **8.11.5.6** of the Agreement.

15 **Replacement Utility Property Interest** means any permanent right, title or interest in  
16 real property outside of the Project ROW (e.g., a fee or an easement) which is acquired  
17 for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work.  
18 The term specifically excludes any statutory right of occupancy or permit granted by a  
19 Governmental Entity for occupancy of its real property by a Utility.

20 **Representative** means, with respect to any Person, any director, officer, employee,  
21 official, lender (or any agent or trustee acting on its behalf), partner, member, owner,  
22 agent, lawyer, accountant, auditor, professional advisor, consultant, engineer,  
23 Subcontractor, other person from whom such Person is, at law, responsible or another  
24 representative of such Person and any professional advisor, consultant or engineer  
25 designated by such Person as its "representative."

26 **Request for Change Proposal** means a written notice issued by ADOT to Developer  
27 under **Section 15.1.2** of the Agreement, advising Developer that ADOT may issue an  
28 ADOT-Directed Change or wishes to evaluate whether to initiate such a change  
29 pursuant to **Section 15.1** of the Agreement.

30 **Request for Design Exception** means the request described in Section DR 440.3.5 of  
31 the Technical Provisions.

32 **Request for Design Variance** means the request described in Section DR 440.3.5 of  
33 the Technical Provisions.

34 **Request for Information** means the request described in Section GP 110.10.2.8.2 of  
35 the Technical Provisions.

1 **Request for Proposals** means the request for proposals referenced in Recital E of the  
2 Agreement.

3 **Request for Qualifications** means the request for qualifications referenced in Recital C  
4 of the Agreement.

5 **Response to ADOT-initiated RFIs** means the documentation and information  
6 Developer prepares in response to ADOT-initiated RFIs.

7 **Results of Internal Audits** has the meaning set forth in Section GP 110.07.2.1.1 of the  
8 Technical Provisions.

9 **Retained Parcels** means the parcels for which ADOT will retain responsibility for  
10 acquisition, relocation, Hazardous Materials remediation, and demolition work, as more  
11 specifically identified in the Acquisition/Relocation Status Report contained in TP  
12 Attachment 470-3 of the Technical Provisions.

13 **Review Comment Responses** means the responses described in Section  
14 GP 110.10.2.6 of the Technical Provisions.

15 **RFC Submittal** means the Submittal described in, and satisfying the requirements of,  
16 Section GP 110.10.2.7.6 of the Technical Provisions.

17 **RFI Log** means the log described in Section GP 110.10.2.8.2 of the Technical  
18 Provisions.

19 **RFP Documents** means all of the information and materials supplied to Developer in  
20 connection with the issuance of the RFQ, the RFP, including Instructions to Proposers,  
21 the Contract Documents, and the Reference Information Documents and any addenda  
22 issued in connection therewith.

23 **Roadway** means that portion of the ROW required for construction, limited by the  
24 outside edges of slopes, including ditches, channels and all structures pertaining to the  
25 work.

26 **Rock Engineer/Blasting Professional** means the individual described in Section  
27 GP 110.08.3.11 of the Technical Provisions.

28 **Routine Maintenance** means all Maintenance Services other than Capital Asset  
29 Replacement Work.

30 **Routine Maintenance Breakdown** means the annual payments set forth in  
31 Exhibit 2-4.4 and corresponding to the portion of the Maintenance Price that cover the  
32 Routine Maintenance Work.

33 **ROW Acquisition Manager** means the individual described in Section 110.08.2.7 of  
34 the Technical Provisions. The ROW Acquisition Manager is one of the Key Personnel  
35 listed in Exhibit 9-2 of the Agreement.

1 **ROW Activity Plan** means the Developer's plan for acquiring ROW for the Project,  
2 containing the items listed in Section DR 470.2.4 of the Technical Provisions.

3 **ROW Electronic Files** means electronic files relating to Project ROW, as more  
4 particularly described in Section DR 470.3.1 of the Technical Provisions.

5 **ROW Exhibit** means a surveyor's drawing of a parcel of real property that shows the  
6 total parcel boundary, course dimensions, bearings and distances of the part acquired,  
7 ROW acquisition area, and geometric data sufficient to support the legal description of  
8 the ROW acquisition area.

9 **ROW Quality Control Specialist** means the individual described in Section  
10 GP 110.08.3.8 of the Technical Provisions.

11 **ROW Services** shall have the meaning set forth in Section 5.1.1 of the Agreement.

12 **ROW Submittal** shall mean any ROW Exhibit, Legal Descriptions, Appraisals,  
13 Acquisition Package, Condemnation Package, and all other Submittals relating to a  
14 single Project ROW parcel submitted to ADOT for review and approval.

15 **Safety Compliance** means any and all improvements, repair, reconstruction,  
16 rehabilitation, restoration, renewal, replacement and changes in configuration or  
17 procedures respecting the Project to correct a specific safety condition or risk of the  
18 Project that ADOT has reasonably determined to exist by investigation or analysis.

19 **Safety Compliance Order** means an order or directive from ADOT to Developer to  
20 implement Safety Compliance.

21 **Safety Corrective Measure** means a Submittal describing the corrective measures  
22 Developer plans to take to address errors and deficiencies Developer discovers through  
23 a safety performance analysis, as described in Section GP 110.09.2.1.11.1 of the  
24 Technical Provisions.

25 **Safety Management Plan** means the plan described in, and satisfying the  
26 requirements of, Section GP 110.09.2.1 of the Technical Provisions.

27 **Safety Manager** means the individual described in Section GP 110.08.2.5 of the  
28 Technical Provisions. The Safety Manager is one of the Key Personnel listed in  
29 Exhibit 9-2 of the Agreement.

30 **Safety Performance Analysis Report** means the report described in  
31 Section GP 110.09.2.1.11.1 of the Technical Provisions.

32 **Safety Standards** means those provisions of the Technical Provisions that ADOT  
33 indicates that it considers to be important measures to protect public safety, worker  
34 safety or the safety of property. As a matter of clarification, provisions of the Technical  
35 Provisions primarily directed at durability of materials or equipment, where the durability

1 is primarily a matter of life cycle cost rather than protecting public or worker safety, are  
2 not Safety Standards.

3 **Salvage Operation Plan** means the plan described in, and satisfying the requirements  
4 of, Section DR 450.2.4 of the Technical Provisions.

5 **Schedule Narrative** means the narrative described in, and satisfying the requirements  
6 of, Section GP 110.06.2.4 of the Technical Provisions.

7 **Schematic Design** means the strip map that ADOT prepared depicting ADOT's  
8 conceptual design for the Project, as included in the Reference Information Documents  
9 entitled "2016-02 Schematic Design Map 1 of 2.pdf" and "2015-06 Schematic Design  
10 Map 2 of 2.pdf."

11 **Schematic ROW** means the Project ROW within the boundary lines indicated in the  
12 Schematic Design maps that ADOT prepared for the Project, as included in the  
13 Reference Information Documents.

14 **Section 401 Water Quality Certification** means the certification review, conducted by  
15 the Arizona Department Environmental Quality and required under the Clean Water Act,  
16 to determine compliance with state water quality standards when an individual Section  
17 404 Permit is required.

18 **Section 404 Permit** means the individual permit for the Project issued by the U.S. Army  
19 Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. §1344) for the  
20 placement of dredged and fill material into waters of the United States, based upon the  
21 Final Design and the Schematic ROW.

22 **Segment Limits Map** means the map of the Project's design segments, as described  
23 in, and satisfying the requirements of, Section GP 110.10.2.6.2 of the Technical  
24 Provisions.

25 **Service Line** means a utility line other than a main utility line, including any meter, that  
26 connects or may be connected to a main utility line and services or is available to  
27 service individuals, businesses and other entities. A Service Line is that portion of a  
28 utility line that extends from the tap of the main utility line, including such tap, through  
29 and including any meter, to a consumer's or potential consumer's residence(s),  
30 business(es) or other improvement(s), facility(ies), equipment or the like, whether  
31 existing, planned or potential / possible. Additionally, any and all utility lines that  
32 connect to a Service Line, including any and all meters, but excluding main utility lines,  
33 are Service Lines.

34 **Setting Date** means the date that is 30 days before the Proposal Due Date.

35 **Sewage Discharge Prevention Plan** means the plan by that name described in  
36 Section CR 430.2.2 of the Technical Provisions.

1 **Shop Drawings and Working Drawings** means the drawings described in Section  
2 GP 110.10.2.8.1 of the Technical Provisions.

3 **Sign Inventory** means the inventory of Project signs, as more particularly described  
4 Section DR 460.2.3 of the Technical Provisions.

5 **Signing Concept Plan** means the plan described in, and satisfying the requirements of,  
6 Section DR 460.3.4.3 of the Technical Provisions.

7 **Site** means Schematic ROW, ADOT Additional Properties, Developer-Designated  
8 ROW, Replacement Utility Property Interests, any ROW where Work for the Project is to  
9 be performed and any Developer's Temporary Work Areas.

10 **Site Documentation** means the documentation described in Section GP 110.11.2 of  
11 the Technical Provisions.

12 **Site Documentation Plan** means the plan described in Section GP 110.04.3 of the  
13 Technical Provisions.

14 **Specialty Inspector** means an inspector that obtains specialized training or certification  
15 to inspect an Element as part of the Maintenance Services, where then-current FHWA  
16 or ADOT guidance, or Good Industry Practice, provides that such specialized training or  
17 certification is desired in order to inspect that Element.

18 **Specialty Inspection** means an inspection performed by a Specialty Inspector, as  
19 required in TP Attachment 500-1 of the Technical Provisions.

20 **Stakeholder Inquiry Form** means the Submittal used to report community member-  
21 initiated inquiries, as more particularly described in Section CR 425.2.3.6 of the  
22 Technical Provisions.

23 **State** means the State of Arizona.

24 **State Highway** means a highway designated as part of the state highway system under  
25 A.R.S. Section 28-304.

26 **Stormwater Management Plan** means the plan described in, and satisfying the  
27 requirements of, Section CR 420.3.4 of the Technical Provisions.

28 **Stormwater Pollution Prevention Plan** means the plan described in, and satisfying  
29 the requirements of, Section CR 420.3.2.2 of the Technical Provisions.

30 **Structure Calculations Report** means the report described in, and satisfying the  
31 requirements of, Section DR 455.3.7.2.1 of the Technical Provisions.

32 **Structure Type Study Report** means the report described in, and satisfying the  
33 requirement of, Section DR 455.3.1 of the Technical Provisions.

1 **Subcontract** means any agreement by Developer with any other Person or  
2 Subcontractor to perform any part of the Work, or any such agreement at a lower tier,  
3 between a Subcontractor and its lower tier Subcontractor, at all tiers.

4 **Subcontractor** means any Person with whom Developer has entered into any  
5 Subcontract to perform any part of the Work on behalf of Developer and any other  
6 Person with whom any Subcontractor has further subcontracted any part of the Work, at  
7 all tiers.

8 **Subcontractor Qualifications** has the meaning set forth in Section DR 470.4.7 of the  
9 Technical Provisions.

10 **Submittal** means any individual document, individual work product item or other written  
11 or electronic end product or item required under the Contract Documents to be  
12 delivered or submitted to ADOT, including those items identified in the Submittal  
13 Schedule. "Submittal" does not include notices, correspondence or invoices for  
14 payment. When used in its lower case spelling, the term "submittal" shall have its plain  
15 language meaning.

16 **Submittal Schedule** means the schedule for all design Submittal packages, as more  
17 particularly described Section GP 110.10.2.6.2 of the Technical Provisions.

18 **Substantial Completion** means the occurrence of all of the events and satisfaction of  
19 all of the conditions set forth in Sections 6.6.1.1 and 6.6.3 of the Agreement, as and  
20 when confirmed by ADOT's issuance of a Certificate of Substantial Completion for the  
21 Project.

22 **Substantial Completion Date** means the date on which Substantial Completion for the  
23 Project occurs.

24 **Substantial Completion Deadline** means the date that is 1350 days after the date of  
25 issuance of NTP 1, as such deadline may be adjusted by Supplemental Agreement  
26 pursuant to the Agreement.

27 **Supplemental Agreement** means a written order issued by ADOT to Developer  
28 delineating changes in the Work within the general scope of the Contract Documents or  
29 in the terms and conditions of the Contract Documents in accordance with Article 14 or  
30 15 of the Agreement, and establishing, if appropriate, an adjustment to the Price or a  
31 Completion Deadline.

32 **Supplier** means any Person not performing work at or on the Site which supplies  
33 machinery, equipment, materials, hardware, software, systems or any other  
34 appurtenance to the Project to Developer or to any Subcontractor in connection with the  
35 performance of the Work. Persons who merely transport, pick up, deliver or carry  
36 materials, personnel, parts or equipment or any other items or persons to or from the  
37 Site shall not be deemed to be performing Work at the Site.

1 **Surety** means each properly licensed surety company, insurance company or other  
2 Person approved by ADOT, which has issued any performance bond, payment bond  
3 other bond required to be issued under the Agreement, including the D&C Performance  
4 Bond, D&C Payment Bond and Maintenance Bonds.

5 **Surveillance** means any activity the purpose of which is to observe Project conditions.

6 **Survey Manager** means the individual described in Section GP 110.08.3.9 of the  
7 Technical Provisions.

8 **System Basis** has the meaning as set forth in Section 14 of TP Attachment 110-2 of  
9 the Technical Provisions.

10 **Tangible Net Worth** means the difference between (the sum of paid-in capital stock  
11 plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority  
12 interest plus intangible assets e.g., goodwill, patents, licenses), all determined in  
13 accordance with Generally Accepted Accounting Principles and as interpreted by the  
14 Securities and Exchange Commission in connection with financial statements filed  
15 pursuant to the Securities Exchange Act of 1934.

16 **Target** means, for each Element, the target for the Measurement Record set forth in the  
17 column headed "Target" in TP Attachment 500-1 of the Technical Provisions.

18 **Technical Provisions** means the project-specific technical provisions entitled  
19 "Technical Provisions for Loop 202 South Mountain Freeway Project Design-Build-  
20 Maintain Agreement."

21 **Temporary Construction Easement** means temporary easements or other temporary  
22 property interests granting rights of use to ADOT, and which ADOT makes available to  
23 Developer, for the limited purposes of carrying out Construction Work or providing  
24 detour routes during the course of the Construction Work. Temporary Construction  
25 Easements are distinguished from Developer's Temporary Work Areas by the fact that a  
26 Temporary Construction Easement is utilized either to directly carry out the activity of  
27 constructing the physical facilities making up the Project or to divert traffic to enable  
28 such construction activity.

29 **Term** has the meaning set forth in Section 2.1 of the Agreement.

30 **Termination by Court Ruling** means any of the following:

31 (a) Issuance of a final, non-appealable order by a court of competent  
32 jurisdiction to the effect that the Agreement is void or unenforceable or impossible to  
33 perform in its entirety, except where void, unenforceable or impossible to perform by  
34 reason of Developer's acts, omissions, negligence, willful misconduct, fraud or breach  
35 of warranty or representation;

36 (b) Issuance of a final, non-appealable order by a court of competent  
37 jurisdiction that causes impossibility of performance of a fundamental obligation by

Developer or ADOT under the Contract Documents or impossibility of exercising a fundamental right of Developer or ADOT under the Contract Documents, and such impossibility cannot be avoided or cured through severability and reformation of the Contract Documents as provided in Section 25.15 of the Agreement; or

(c) Issuance of a final, non-appealable order by a court of competent jurisdiction:

(i) Permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the Project, except where such injunction or prohibition is attributable to Developer's acts, omissions, negligence, willful misconduct, fraud, breach of an obligation under the Contract Documents or violation of Law or an applicable Governmental Approval, or

(ii) Requiring ADOT, either individually or in concert with FHWA, to undertake additional or supplemental evaluations, studies or other work under NEPA that, in ADOT's sole discretion, is impracticable in light of the purpose and intent of the Agreement or the Project.

**Termination for Convenience** means a termination of the Agreement made pursuant to Section 24.1 of the Agreement.

**Temporary Phasing Controller Programming Request** means the request described in Section CR 460.3.3 of the Technical Provisions.

**Test Blast Report** means the report described in Section CR 416.3.4.6 of the Technical Provisions.

**Test Plot Slope Cut Plan** means the plan described in Section CR 416.3.4.1 of the Technical Provisions.

**Third-Party Agreement** means any agreement between ADOT and the City of Phoenix listed in Table 408-1 of Section DR 408 of the Technical Provisions. Such executed agreements are included in the Reference Information Documents as of the Effective Date.

**Third Party Intellectual Property** means any Intellectual Property owned by any Person unrelated to Developer or its Affiliates or Subcontractors and which is incorporated into the Project.

**Threatened or Endangered Species** means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

**Time Impact Analysis** means an analysis, as described in, and satisfying the requirements of, Section GP 110.06.2.11 of the Technical Provisions.



1 **Title Policy** means a policy of title insurance as set forth in Section DR 470.3.2D of the  
2 Technical Provisions.

3 **Tracer Wire Report** means the report described in Section CR 430.3.2 of the Technical  
4 Provisions.

5 **Traffic Control Plans** means the plans described in, and satisfying the requirements of,  
6 Section DR 462.3.2 of the Technical Provisions.

7 **Traffic Report** means the report described in Section DR 460.3.2 of the Technical  
8 Provisions.

9 **Traffic Software** means the software described in Section DR 460.2.2 of the Technical  
10 Provisions.

11 **Transportation Management Plan** means the plan prepared by Developer for the  
12 management of traffic during construction, as more particularly described in 23 CFR  
13 630 Subpart J and Section DR 462.2.3 of the Technical Provisions.

14 **Traffic Signal Modification Request** means the request described in  
15 Section CR 460.3.3 of the Technical Provisions.

16 **Tribe** means any entity whose members are the original indigenous people of North  
17 America. Tribes include American Indians and Alaska Natives. Tribal members are  
18 recognized by the United States as citizens of three sovereigns, their Tribe, the United  
19 States, and the state in which they live.

20 **TWG Minutes** means the meeting minutes described in Section GP 110.02.4 of the  
21 Technical Provisions.

22 **Uniform Act** means the Federal Uniform Relocation Assistance and Real Property  
23 Acquisition Policies Act, , 42 USC Sections 4601 *et seq.*, P.L. 91-646, as amended.

24 **UPRR Construction and Maintenance Agreement** means the written agreement(s) to  
25 be entered into between ADOT and UPRR regarding the construction and maintenance  
26 of Elements that affect UPRR ROW.

27 **UPRR Work Authorization** means the UPRR's authorization of Developer performing  
28 Work within UPRR ROW as described in Section DR 436.3.4 of the Technical  
29 Provisions.

30 **Utility** or **utility** means a public, private, cooperative, municipal or government line,  
31 facility or system used for the carriage, transmission or distribution of cable television,  
32 electric power, heat, telephone, telegraph, water, gas, oil, petroleum products, steam,  
33 chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with  
34 the drainage of the Project, and similar substances that directly or indirectly serve the  
35 public. The term "Utility" or "utility" includes private irrigation facilities that are available

on a common carriage basis to serve agricultural properties throughout the relevant service area.

The term “Utility” or “utility” specifically excludes:

- (a) Storm water facilities providing drainage for the Project ROW;
- (b) Street lights and traffic signals;
- (c) ITS facilities; and
- (d) Water wells held for private use.

The necessary appurtenances to each utility facility shall be considered part of such utility. Without limitation, any Service Line up to and including the meter, connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such Service Line.

**Utility Adjustment** means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, maintenance or use of the Project; provided, however, that the term “**Utility Adjustment**” shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located within the Project ROW shall be considered a separate Utility Adjustment.

**Utility Adjustment Coordinator** means the individual described in Section GP 110.08.2.8 of the Technical Provisions. The Utility Adjustment Coordinator is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

**Utility Adjustment Package** means the package described in Section CR 430.3.3 of the Technical Provisions.

**Utility Adjustment Work** means all efforts and costs necessary to accomplish the required Utility Adjustments, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of Existing Utility Property Interests, preparation of Utility Assemblies, and acquisition of Replacement Utility Property Interests, whether provided by Developer or by the Utility Companies. The term also includes any reimbursement of Utility Companies which is Developer’s responsibility pursuant to Section 5.10.4 of the Agreement. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Company is not part of the Work.

1 **Utility Agreement** means an agreement between Developer and a Utility Company that  
2 establishes the rights and obligations of Developer and the Utility Company with respect  
3 to one or more Utility Adjustments. In the case of an agreement with a Utility Company  
4 that holds prior rights, ADOT will also be a party to the agreement. Such an agreement  
5 may be general or comprehensive or may address only certain aspects of a Utility  
6 Adjustment.

7 **Utility Clearance Letter** means the letter described in Section DR 430.2.4.3 of the  
8 Technical Provisions.

9 **Utility Company** means the owner or operator of any Utility (including both privately  
10 held and publicly held entities, cooperative utilities, and municipalities and other  
11 governmental agencies).

12 **Utility Company Delay** means, only with respect to a necessary Utility Adjustment,  
13 delay to the Critical Path caused by:

14 (a) A Utility Company's failure to provide material information necessary for  
15 Developer to present to the Utility Company a proposed design package for the  
16 applicable Utility Adjustment and proposed Utility Agreement for negotiation within 45  
17 days after (i) ADOT receives Developer's request for ADOT's assistance as described  
18 in Section 5.10.7.1 of the Agreement, and (ii) ADOT receives satisfactory evidence that  
19 Developer satisfied the "conditions to assistance" set forth in Section 5.10.7.2(a) of the  
20 Agreement;

21 (b) A Utility Company's failure to negotiate and execute a Utility Agreement  
22 that ADOT has approved as containing commercially reasonable material terms,  
23 schedule and conditions within 90 days after:

24 (i) Developer presents to the Utility Company a proposed Utility  
25 Agreement that includes such material terms, schedule and conditions and a complete  
26 design package for the Utility Agreement;

27 (ii) ADOT receives Developer's request for ADOT's assistance as  
28 described in Section 5.10.7.1 of the Agreement; and

29 (iii) ADOT receives satisfactory evidence that Developer satisfied the  
30 "conditions to assistance" set forth in Section 5.10.7.2(a) of the Agreement;

31 (c) Only with respect to a Utility Company for which ADOT did not disclose to  
32 Developer a Utility MOU by October 15, 2015, such a Utility Company's failure to review  
33 and respond to a complete design submittal from Developer within 60 Business Days  
34 per complete design submittal;

35 (d) A Utility Company's failure to timely perform its other obligations under the  
36 applicable, executed Utility Agreement, provided that the schedule in the applicable  
37 Utility Agreement sets forth reasonable timelines for the Utility Company to perform its  
38 other obligations, as determined by ADOT in its good faith discretion; or

(e) Failure of a Utility Company to reasonably cooperate specifically because it disputes ADOT's determination that it lacks proper Prior Rights Documentation, provided that Developer makes reasonable efforts to resolve the dispute and proceeds with Utility Adjustment Work pending its resolution.

Notwithstanding the foregoing, any delay by a Utility Company caused by, among other things, the failure of any Developer-Related Entity to locate or design the Project or carry out the Work in accordance with the Contract Documents, the Adjustment Standards, the applicable Utility Agreement, the NEPA Approval, other Governmental Approval or applicable Law shall not be considered Utility Company Delay.

**Utility Company Project** means the design and construction by or at the direction of a Utility Company (or by Developer pursuant to Section 5.10.6 of the Agreement) of a new Utility other than as part of a Utility Adjustment. Betterments are not Utility Company Projects. Utility Company Projects shall be entirely the financial obligation of the Utility Company.

**Utility Coordination Plan** means the plan described in, and satisfying the requirements of, Section DR 430.2.2.1 of the Technical Provisions.

**Utility Information** means the information regarding Utilities included in the Reference Information Documents or in TP Attachment 430-1 of the Technical Provisions, together with any other information ADOT provided to Developer prior to the Setting Date with regard to identification of Utilities. The Utility Information includes:

(a) Survey information regarding existing utilities;

(b) Utility maps included as an overlay on the survey;

(c) As-built maps for existing Utilities;

(d) Prior Rights Documentation; and

(e) Other information as to the existence or nature of any rights or interests of any Utility Company relating to use or occupancy of real property. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

**Utility Memorandum of Understanding** or **Utility MOU** means each memorandum of cooperation, memorandum of understanding or other document entered into between, or mutually accepted by, ADOT and a Utility Company pertaining to Utility Adjustments.

**Utility Report** means the utility report described in, and satisfying the applicable requirements of, Section DR 430.3.3 of the Technical Provisions.

**Utility Service Request Letter** means the letter described in, and satisfying the requirements of, Section DR 430.3.5 of the Technical Provisions.

1 **Utility Work Acceptance Request** means the request described in Section CR  
2 430.3.1.2 of the Technical Provisions.

3 **Vacated Parcel Notification** means a notice as required under Section DR 470.4.7G of  
4 the Technical Provisions.

5 **Vehicle Project Logo** means the Project logo to be placed on vehicles, as more  
6 particularly described in Section GP 110.05.4.3 of the Technical Provisions.

7 **Visual Analysis** means the analysis described in Section DR 450.2.8 of the Technical  
8 Provisions.

9 **Visual Animation** means the animation described in Section GP 110.10.2.5.4.4 of the  
10 Technical Provisions.

11 **Warranty** means the warranty of the Non-Maintained Elements provided by Developer  
12 pursuant to Section 12.1.1 of the Agreement.

13 **Warranty Bond** means the bond described in Section 10.1.1 of the Agreement.

14 **Warranty Term** has the meaning set forth in Section 12.1.2 of the Agreement.

15 **Water Quality Records** means the records described in Section CR 420.3.2.8 of the  
16 Technical Provisions.

17 **Work** means all of the work required under the Contract Documents, including all  
18 administrative, design, engineering, real property acquisition and occupant relocation,  
19 support services, Utility Adjustment Work to be furnished or provided by Developer,  
20 reimbursement of Utility Companies for Utility Adjustment Work furnished or provided by  
21 such Utility Companies or their contractors and consultants, procurement, professional,  
22 manufacturing, supply, installation, construction, supervision, management, testing,  
23 verification, labor, materials, equipment, maintenance, documentation and other duties  
24 and services to be furnished and provided by Developer as required by the Contract  
25 Documents, including all efforts necessary or appropriate to achieve Final Acceptance  
26 and to satisfy the Handback Requirements, except for those efforts which such Contract  
27 Documents expressly specify will be performed by Persons other than the Developer-  
28 Related Entities. For the avoidance of doubt, Work includes all D&C Work and  
29 Maintenance Services applicable to the Project.

30 **[END OF EXHIBIT 1]**

## **EXHIBIT 2**

### **DEVELOPER'S PROPOSAL COMMITMENTS AND CLARIFICATIONS**

### **EXHIBIT 3**

#### **LIST OF REFERENCE INFORMATION DOCUMENTS**

<b>No.</b>	<b>File Name</b>	<b>Size (MB)</b>
<b>01 Environmental</b>		
1	2008-09 ADOT Statewide Stormwater Discharge Permit.pdf	1
2	2008-08 Arizona Pollution Discharge Elimination System Fact Sheet.pdf	1
3	2013-04 DEIS Technical Reports.zip	280
4	2013-04 DEIS Volume I.pdf	116
5	2013-04 DEIS Volume II_Appendices.pdf	70
6	2013-05 DEIS Public Hearing Banners.pdf	32
7	2013-09 ADOT Postconstruction Best Management Practices Manual for Water Quality.pdf	11
8	2014-09 FEIS Technical Reports and Addenda.zip	277
9	2014-09 FEIS Volume I.pdf	100
10	2014-09 FEIS Volume II_Appendices.pdf	464
11	2014-09 FEIS Volume III_Comment Responses.pdf	243
12	2014-11 FEIS Volume IV_Errata to the FEIS	4
13	2015-03 South Mountain Freeway Record of Decision Volume I Main Text.pdf	24
14	2015-03 South Mountain Freeway Record of Decision Volume II Appendix A.pdf	39
15	2015-03 South Mountain Freeway Record of Decision Volume III Appendix B C D.pdf	25
16	2011-07 ADOT Final Noise Abatement Policy.pdf	1
17	2015-05 Center Segment GIS Files.zip	1
18	2015-06 Environmentally Sensitive Avoidance Area GIS Files.zip	1
19	Traffic Noise Model Files.zip	3
20	2014-06 Juris Waters Tech Addendum and Preliminary JD.pdf	54
21	2014-12 AGFD Sonoran Desert Tortoise Survey Report.pdf	2
22	2015-01 Draft SMF EIS Revised PA.pdf	1
23	USACE Mitigation Ratio Setting Checklist.pdf	1

No.	File Name	Size (MB)
24	USACE Instructions for Preparing Mitigation Ratio Setting Checklist.pdf	1
25	Waters of the US GIS Files.zip	1
26	Sample Compliance Evaluation Report.pdf	1
27	GRIC Native Plant Ordinance.pdf	1
02 Design		
1	0000-00 ADOT Bridge Load Rating Guidelines.pdf	1
2	1988-09 Southwest Loop Highway DCR Plans.pdf	10
3	1999-10 AWS Welding Code D1.1.pdf	23
4	2006-11 AGFD Guidelines for Culvert Construction to Accommodate Fish and Wildlife Movement and Passage.pdf	1
5	2007-10 AGFD Guideline for Handling Sonoran Desert Tortoises Encountered on Development Projects.pdf	1
6	2008-06 AGFD Recommended Standard Mitigation Measures for Projects in Sonoran Desert Tortoise Habitat.pdf	1
7	2008-11 AGFD Guidelines for Bridge Construction or Maintenance to Accommodate Fish and Wildlife Movement and Passage.pdf	1
8	2009-11 FHWA Design of MSE Walls and Reinforced Soil Slopes.pdf	5
9	2010-00 AWS Bridge Welding Code D1.5.pdf	1
10	2011-00 Arizona Nursery Association Container Grown Tree Guide.pdf	1
11	2011-02 Avenida Rio Salado-Broadway Road Alternative D.pdf	6
12	2011-04 South Mountain Freeway Value Analysis Final Report.pdf	1
13	2011-10 MAG SR-202L South Mountain Freeway Review.pdf	6
14	2011-11 Change of Access Report.pdf	33
15	2013-05 DEIS Public Hearing – Freeway Video.wmv	284
16	2013-05 DEIS Public Hearing – Web site – Corridor Maps.pdf	19
17	2014-04 ANSI American Standard for Nursery Stock.pdf	5
18	2014-10 15% Plans.pdf	101
19	2014-10 Roll Plots Eastern Section_Updated.pdf	272
20	2014-10 Roll Plots Western Section_Updated.pdf	370
21	2015-04 Final LDCR Appendix C Traffic Files.zip	6



No.	File Name	Size (MB)
22	2015-04 Final LDCR CADD Files.zip	353
23	2015-04 Final LDCR.pdf	204
24	2015-04 Landscape Architecture and Aesthetics Design Concept Report.pdf	94
25	2016-02 Schematic Design Map 1 of 2.pdf	449
26	2015-06 Schematic Design Map 2 of 2.pdf	270
27	Project aerals.zip	6,830
28	2011-11 Change of Access Report – HCS VISSIM Files.zip	16
29	2013-08 ADOT Special Provisions for MSE Walls.pdf	1
30	2015-04 FHWA Letter – Approved Interstate Change of Access.pdf	1
31	2015-04 Final LDCR InRoads Files.zip	1
32	2015-05 SR 30 and SMF TI Plans.pdf	24
33	2015-05 SR 30 CAD and InRoads Files.zip	1
34	2015-05 SR 30 and SMF TI VISSIM Files.zip	2
35	ADOT Record Drawings.zip	4,000
36	2015-04 LAADCR CAD Files.zip	187
37	ADOT Record Drawings 02.zip (replacement of corrupted files)	53
38	Phoenix Supplemental Std Dtl to MAG.pdf	11
39	1989-06 Slope Erosion Control for Urban Freeways in Arid Climates 1 of 2.PDF	18
40	1989-06 Slope Erosion Control for Urban Freeways in Arid Climates 2 of 2.PDF	2
41	Hohokam Bird Graphic_v2.pdf	1
42	Potential Landform Graphic Locations.pdf	23
43	2011-01 AGFD Guidelines for Wildlife Fencing.pdf	2
44	2011-03 FHWA Wildlife Crossing Structures Handbook.pdf	12
45	2015-04 AASHTO Constr Guidelines for Wildlife Fencing and Escape.pdf	10
46	2010-09 FHWA Interstate System Access Informational Guide.pdf	1
47	Example Tree Placement for MU Crossing 3.pdf	1
48	Pipe Rail examples.zip	7

No.	File Name	Size (MB)
49	Example Trail Camera Mounts.pdf	1
50	SMF Access Control Variance Exhibit.pdf	18
51	Visual Analysis Examples.zip	50
52	2015-10 LAADCR - Revised Ocotillo Settlement Sheet.pdf	1
53	2015-10 LAADCR – Revised Cholla-Ocotillo Sheet	1
54	B_NR5764W59_01.DGN (dated 1/28/16)	1
03 Geotechnical		
1	1987-12 Geotech Inv Report Southwest Loop Highway.pdf	33
2	1999-04 Phx Water Line 35th Ave to 17th Ave Geotec Eng Report.pdf	2
3	2000-03 Phx Water Line Tunnel Section Geotec Eng Report.pdf	3
4	2000-04 Geotechnical Investigation Report – Foundations – I-10 Loop 202 System TI.pdf	18
5	2000-04 Geotechnical Investigation Report – Roadway – I-10 Loop 202 System TI.pdf	14
6	2000-04 Geotechnical Investigation Report – Roadway Plans – I-10 Loop 202 System TI.pdf	2
7	2001-01 Geotech Assessment Design Concept Study of I-10 Maricopa Rd TI to I-8.pdf	19
8	2001-10 Geotechnical Evaluation Laveen Area Conveyance Channel.pdf	22
9	2001-11 FHWA Rockfall Catchment Area Design Guide.pdf	4
10	2004-12 HDR Memo Prelim Rock Slopes and Rockfall Ditches.pdf	1
11	2008-07 HDR Memo Controlled Blasting and Phx Water Line.pdf	1
12	2013-02 Draft Foundation Investigation Report UPRR Overpass Bridges.pdf	24
13	2015-06 Preliminary Geotechnical Boring Access Plan.pdf	187
14	2015-06 Preliminary Geotechnical Boring Plans.pdf	51
15	2015-05 I10 and L202 Pavement Condition Data.xlsx	1
16	2015-06-25 Preliminary Boring Logs.zip	6
17	2015-07-13 Preliminary Boring Logs.zip	1
18	Rock Core Photos.zip	515
19	Rock Core Photos 02.zip	227

No.	File Name	Size (MB)
20	2015-07-27 Preliminary Boring Logs.zip	6
21	2015-08-03 Preliminary Boring Logs.zip	27
22	2015-06 Geomechanics Southwest - SPT - Final Report.pdf	1
23	2015-08 Summary of GSI Drill Rigs used by Boring.pdf	1
24	2015-08-19 Preliminary Boring Logs.pdf	1
25	2015-09-02 Preliminary Boring Logs.zip	1
26	Lab Test Results 01.zip	19
27	Rock Core Photos.zip	2
28	2015-09-25 Final Boring Logs.zip	6
29	2015-09-25 Preliminary Boring Logs.zip	2
30	Load Test Documentation 01.zip	9
31	Lab Test Results 02.zip	61
32	2015-09 Summary of GSI Drill Rigs used by Boring 2.pdf	1
33	Load Test Documentation 02.zip	9
34	2015-10-07 Preliminary Boring Logs.zip	2
35	2015-10-13 Preliminary Boring Logs.zip	3
36	2015-10-15 Final Boring Logs.zip	15
37	Lab Test Results 03.zip	5
38	Load Test Documentation 03.zip	6
39	10-19-15 Final Boring Logs.zip	1
40	Lab Test Results 04.zip	4
41	Load Test Documentation 04.zip	1
04 Utilities and Railroad		
1	2009-12 ADOT Utility Coordination Guide.pdf	1
2	2010-10 Sample UPRR Executed Agreement.pdf	3
3	2011-02 Sample ACC Signed Application.pdf	1
4	2013-02 ADOT Standard Utility Agreement.pdf	1

<b>No.</b>	<b>File Name</b>	<b>Size (MB)</b>
5	2014-10 General Info Meeting.zip	2
6	2014-12 Sample ACC Procedures for requesting a new crossing.pdf	1
7	2015-04 SMF Existing Utility Inventory_v1.xlsx	1
8	2015-05 SMF Utility Company Contacts_v2.xls	1
9	All Power Companies Coordination.zip	4
10	APS.zip	1
11	Cell Tower.zip	1
12	Century Link.zip	1
13	City of Phoenix (Water & Sewer).zip	4
14	COX.zip	1
15	KM (EPNG).zip	1
16	KM (PETRO).zip	22
17	Level 3.zip	2
18	Roosevelt Irrigation District.zip	13
19	Sprint.zip	1
20	SRP Irrigation.zip	18
21	SRP Power.zip	69
22	SWG.zip	19
23	UPRR.zip	50
24	Verizon.MCI.zip	1
25	WAPA.zip	6
26	ZAYO.zip	3
27	2015-05 Utilities Supplement 01.zip	170
28	2015-06 Utilities Supplement 02.zip	12
29	2015-06 Utilities Supplement 03.zip	11
30	2015-07 Utilities Supplement 04.zip	3
31	2015-08 Utilities Supplement 05.zip	119
32	2015-08 Utilities Supplement 06.zip	17

No.	File Name	Size (MB)
33	General Utility Engagement email.pdf	1
34	SMF General Utility Engagement Sample.pdf	1
35	Signed Rules of Engagement 01.zip	1
36	2015-09 Utilities Supplement 07.zip	40
37	2015-09 Guidline for Accommodating Utilities on Highway Rights-of-way.pdf	1
38	2015-09 Utilities Supplement 08.zip	18
39	2015-09 Utilities Supplement 09.zip	1
40	2015-10 Utilities Supplement 10.zip	1
41	2015-10 Utilities Supplement 11.zip	3
42	2015-10 Utilities Supplement 12.zip	4
05 Drainage		
1	1992-07 Laveen ADMP.zip	30
2	2001-11 Laveen ADMP.zip	63
3	2002-10 Durango ADMP.zip	93
4	2002-11 Laveen Area Conveyance Channel.zip	166
5	2006-11 Sundland Channel CAR.zip	45
6	2009-05 COP 40th Street Park and Ride Facility Drainage Report.pdf	2
7	2013-09 FHWA Urban Drainage Design Manual HEC 22 3 <sup>rd</sup> Edition.pdf	7
8	Durango CAR.zip	9
9	Miscellaneous Historic Drainage Reports and Studies.zip	267
10	Project Model Areas.zip	564
11	2015-04 FCDMC Ahwatukee Foothills ADMS Preliminary Results.pdf	7
12	HEC-RAS Model for Laveen Channel.zip	1
13	HEC-RAS Model for Papago Channel.zip	1
14	I10 Papago StormCad.zip	1
15	I-10 Drainage Files.zip	262
16	2015-10 Ahwatukee ADMS Discharge Comparison.pdf	1

No.	File Name	Size (MB)
17	2015-10 Ahwatukee ADMS FLO-2D Exhibit 9.pdf	4
06 Survey		
1	2001-09 ROS South Mountain Freeway Corridor.pdf	2
2	2008-08 ROS South Mountain Freeway.pdf	19
3	2011-02 ROS 61st Avenue Alignment.pdf	1
4	2011-02 ROS Chandler Blvd.pdf	1
5	2012-09 ROS South Mountain Freeway.pdf	6
6	2013-10 ROS South Mountain Freeway Signed Mylars.pdf	27
7	2014-09 ROS Section 28 Supplemental.pdf	1
8	2015-03 ROS South Mountain Freeway.pdf	96
9	2015-05 UPRR Top of Rail Survey Data.zip	1
10	Power Line Survey at 40th Street.zip	1
11	Power Line Survey at Elwood Street.zip	1
07 Traffic		
1	2001-04 COP Laveen Commons Traffic Impact Analysis.pdf	2
2	2005-12 ADOT Traffic Analysis Lessons Learned.pdf	1
3	2007-05 COP SWC 59th Baseline Final Report.pdf	2
4	2007-06 COP Southern Avenue Traffic Impact Study.pdf	1
5	2007-07 COP Laveen Spectrum Traffic Impact Analysis.pdf	12
6	2012-01 2009 Arizona Supplement to MUTCD as revised.pdf	1
7	2012-05 2009 Manual on Uniform Traffic Control Devices as revised.pdf	30
8	2015 03 Sample Light Pole Tag – 01.pdf	1
9	2015 03 Sample Light Pole Tag – 02.pdf	1
10	2015 03 Sample Light Pole Tag – 03.pdf	1
11	2013-08 MAG Travel Demand Model Output.zip	171
12	2015-07 ADOT ITS Std Specification for South Mnt Fwy RFP.pdf	1

No.	File Name	Size (MB)
13	ADOT Road Closure Guidelines – Phoenix Region.PDF	1
14	MAG Conversion Factors.PDF	1
08 Third-party As-builts		
1	AT-T 1986-03 RID canal.pdf	3
2	COP 1987-02 32nd Street north of Pecos Road.pdf	29
3	COP 1987-02 Pecos Road 32nd to 40th Streets.pdf	122
4	COP 1987-05 Pecos Road 28th to 40th Streets.pdf	24
5	COP 1987-11 67th Avenue Buckeye Road to Broadway Road.pdf	239
6	COP 1987-12 Estrella Business park – 67th Avenue.pdf	29
7	COP 1994-08 Pecos Road 19th Avenue to 28th Street.pdf	55
8	COP 1994-08 Pecos Road and 40th Street.pdf	8
9	COP 1995-05 17th Avenue north of Pecos Road.pdf	3
10	COP 1996-03 Nationsway Transport Service – Lower Buckeye Road.pdf	5
11	COP 1997-12 Pecos Road and 17th Avenue.pdf	2
12	COP 2000-06 South Mountain Water Transmission Main Reach 6.pdf	6
13	COP 2000-06 South Mountain Water Transmission Main Reach 7.pdf	8
14	COP 2001-02 South Mountain Water Transmission Main Reach 4a.pdf	3
15	COP 2001-11 Southern Avenue 51st to 55th Avenues.pdf	3
16	COP 2002-03 Water Line through South Mountains.pdf	4
17	COP 2004-05 Estrella Tech Center – Buckeye Road.pdf	2
18	COP 2004-10 Rio Del Rey – 59th Avenue and Broadway Road.pdf	4
19	COP 2005-06 Baseline Road and 51st Avenue.pdf	5
20	COP 2006-06 Diamond Shamrock – Baseline Road and 51st Avenue.pdf	1
21	COP 2006-07 Baseline Road at 59th Avenue.pdf	1
22	COP 2009-05 40th Street Park and Ride Facility Expansion.pdf	36
09 3rd Party Information		

No.	File Name	Size (MB)
1	Land Developers.zip	139
2	Maricopa County Department of Transportation.zip	1
3	Maricopa County Flood Control District.zip	1
4	Maricopa County Parks and Recreation.zip	1
5	Maricopa County Stormwater Program.zip	1
6	Valley Metro.zip	109
7	Land Developers 02.zip	5
8	City of Phoenix.zip	1
10 Agreements		
1	2006-12 Programmatic Agreement.pdf	1
2	2012-06 US Army Corps IGA – FHWA ADOT.pdf	1
3	2013-03 US Army Corps MOA with FHWA ADOT.pdf	2
4	JPA 15-0005234-Dist C-City of Phoenix-H8827-SMF Turnback-EXECUTED.pdf	9
5	JPA 15-0005211-Dist C-City of Phoenix-H8827-SMF Maintenance-EXECUTED.pdf	9
6	JPA 15-0005526-Dist C-City of Phoenix-H8827-SMF Pedestrian Overpass-EXECUTED.pdf	1
11 Right of Way		
1	0000-00 Uniform Act 42 USC Chapter 61.pdf	1
2	2005-01 FHWA Final Rule on Uniform Act 49 CFR Part 24.pdf	1
3	2015-10 Acquisition-Relocation Status Report v16.pdf	1
4	GRIC well locations.zip	1
5	2015-10 Acquisition-Relocation Status Report v16.xlsx	1
6	GRIC Well Background Info.zip	13
7	2011-01 ADOT Right of Way Procedures Manual.pdf	6
8	Asbestos Project Clearance Letter.pdf	1
9	Vacated Parcel Notification.pdf	1



No.	File Name	Size (MB)
10	Waste Transfer Manifest.pdf	1
11	GRIC Well Background Info 02.zip	1
12	Example Condemnation Letter.doc	1
13	Phase 1 Reports 01.zip	430
14	Phase 1 Reports 02.zip	490
15	Phase 1 Reports 03.zip	380
16	Phase 1 Reports 04.zip	370
17	Parcel 7-11645 Title Report.pdf	1
12 Miscellaneous		
1	2006-00 FHWA Road Safety Audit Guidelines.pdf	5
2	2010-04 Design Build Projects 23 CFR 710.313.pdf	1
3	2014-01 SMF Summary Report - Public Involvement for the DEIS.pdf	9
4	2014-11 ADOT BECO DBE Good Faith Efforts Guide.pdf	1
5	2015-03 ADOT Site Specific Safety Plan Review Checklist.pdf	1
6	2010-07 Feature Inventory System.pdf	12
7	2010-07 Feature Inventory System 03 Roadway Config.xlsx	1
8	SMF-RFP-References.pdf	1
9	Maintenance Costs FY 2015 I-10 MP 135-140.xlsx	1
10	Graffiti Shield Details.pdf	1
11	Potential ADOT Land for Field Offices.pdf	1
12	Landscape Inventory config.xlsx	1
13	Roadway Inventory config.xlsx	1
14	Signing Inventory config.xlsx	1

**EXHIBIT 4**  
**FEDERAL REQUIREMENTS**

	<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1	Federal Requirements for Federal-Aid Construction Projects	4
Attachment 2	FHWA Form 1273	10
Attachment 3	Federal Prevailing Wage Rates	12
Attachment 4	Equal Employment Opportunity	6
Attachment 5	Affirmative Action	2
Attachment 6	Appendix A to DOT Standard Title VI Assurances and Non-Discrimination Provisions: Contractor Assurances	2
Attachment 7	Appendix E to DOT Standard Title VI Assurances and Non-Discrimination Provisions: Pertinent Non-Discrimination Authorities	2
Attachment 8	Compliance with Federal Immigration Laws	3
Attachment 9	Compliance with Cargo Preference Act	1

## **ATTACHMENT 1 TO EXHIBIT 4**

### **FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 4. Whenever in said required contract provisions, or elsewhere in this Exhibit 4 (as applicable), references are made to:

(a) "contracting officer" or "authorized representative" such references shall be construed to mean ADOT or its Authorized Representative;

(b) "contractor," "prime contractor," "bidder," "proposer," "Federal-aid construction contractor," "prospective first tier participant," or "First Tier Participant," such references shall be construed to mean Developer or its Authorized Representative;

(c) "contract," "prime contract," "Federal-aid construction contract," or "design-build contract," such references shall be construed to mean the Contract between Developer and ADOT for the Project;

(d) "subcontractor," "supplier," "vendor," "prospective lower tier participant," "lower tier prospective participant," "Lower tier participant," or "lower tier subcontractor," such references shall be construed to mean any Subcontractor or Supplier; and

(e) "department," "agency," "department or agency with which this transaction originated," "department or agency entering into this transaction," or "contracting agency," such references shall be construed to mean ADOT, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

**NON-COLLUSION PROVISION.** — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.** — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the Contract and ADOT's Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### **CONVICT PRODUCED MATERIALS**

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

#### **ACCESS TO RECORDS**

a. As required by 49 CFR 18.36(i)(10), Developer and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its subcontractors shall retain all books, documents, papers and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. Developer agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

**ATTACHMENT 2 TO EXHIBIT 4**

**FHWA FORM 1273**

**[See attached]**

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

#### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et

seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such

advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.



b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

### **9. Selection of Subcontractors, Procurement of**

**Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### **III. NONSEGREGATED FACILITIES**

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

#### **IV. DAVIS-BACON AND RELATED ACT PROVISIONS**

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

##### **1. Minimum wages**

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and

wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits

under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the

Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **4. Apprentices and trainees**

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress,

expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause

include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

#### **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering

services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or

more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation

in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but

is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or



agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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#### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.



**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**ATTACHMENT 3 TO EXHIBIT 4**  
**FEDERAL PREVAILING WAGE RATES**

The federal prevailing wage rates for the Work through Final Acceptance shall be those set forth below.

**General Decision Number:** AZ20150008 (Awaiting Publication)

**Superseded General Decision Number:** AZ20140008

**State:** Arizona

**Construction Type:** Highway

**Counties:** Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma Counties in Arizona.

#### HIGHWAY CONSTRUCTION PROJECTS

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

<b>Modification Number</b>	<b>Publication Date</b>
0	01/02/2015
1	06/12/2015
2	08/07/2015
3	11/06/2015

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\* **CARP0408-005** 10/01/2015

	Rates	Fringes
CARPENTER (Including Cement Form Work) .....	\$ 24.63	11.54
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	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1 .....	\$ 22.59	9.34
Group 2 .....	\$ 25.86	9.34
Group 3 .....	\$ 26.94	9.34
Group 4 .....	\$ 27.97	9.34

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

GROUP 1: A-frame boom truck, air compressor, Beltcrete, boring bridge and texture, brakeman, concrete mixer (skip type), conductor, conveyor, cross timing and pipe float, curing machine, dinky (under 20 tons), elevator hoist (Husky and similar), firemen, forklift, generator (all), handler, highline cableway signalman, hydrographic mulcher, joint inserter, jumbo finishing machine, Kolman belt loader, machine conveyor, multiple power concrete saw, pavement breaker, power grizzly, pressure grout machine, pump, self-propelled chip spreading machine, slurry seal machine (Moto paver driver), small self-propelled compactor (with blade-backfill, ditch operation), straw blower, tractor (wheel type), tripper, tugger (single drum), welding machine, winch truck

GROUP 2:

ALL COUNTIES INCLUDING MARICOPA: Aggregate Plant, Asphalt plant Mixer, Bee Gee, Boring Machine, Concrete Pump, Concrete Mechanical Tamping-Spreading Finishing Machine, Concrete Batch Plant, Concrete Mixer (paving & mobile), Elevating Grader (except as otherwise classified), Field Equipment Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter, Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade operation), Slip Form (power driven lifting device for concrete forms), Soil Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger (2 or more drums).

MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough), Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all types 3<6 cu yd), Tractor (dozer, pusher-all).

GROUP 3:

ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring Machine (including Mole, Badger & similar type directional/horizontal), Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder, Helicopter Hoist or Pilot, Highline Cableway, Mechanical

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Hoist, Mucking Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid), Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth Moving Machine, Slip Form Paving Machine (including Gunnert, Zimmerman & similar types), Tower Crane or similar type.

MARICOPA COUNTY ONLY: Backhoe<10 cu yd, Clamshell < 10 cu yd, Concrete Pump (truck mounted with boom only), Dragline <10 cu yd, Grade Checker, Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel 10 cu yd and over.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive \$0.01 per hour per foot over 80 ft in addition to regular rate of pay

Premium pay for performing hazardous waste removal \$0.50 per hour over base rate.

~~IRON0075-004 08/01/2015~~-----

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

	Rates	Fringes
Ironworker, Rebar .....	\$ 26.00	21.77
Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson		
Zone 2: 050 to 100 miles - Add	\$4.00	
Zone 3: 100 to 150 miles - Add	\$5.00	
Zone 4: 150 miles & over - Add	\$6.50	

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	Rates	Fringes
Laborers:		
Group 1 .....	\$ 16.49	4.95
Group 2 .....	\$ 17.39	4.95
Group 3 .....	\$ 18.09	4.95
Group 4 .....	\$ 19.03	4.95
Group 5 .....	\$ 19.89	4.95

LABORERS CLASSIFICATIONS:

GROUP 1: All Counties: Chipper, Rip Rap Stoneman. Pinal County Only: General/Cleanup Laborer. Maricopa County Only: Flagger.

GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer), Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine Grader, Guinea Chaser, Power Type Concrete Buggy

GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine, Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator and Tender of Pneumatic and Electric Tools (not herein separately classified), Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-Cast Manhole Erector, Rigger and Signal Man-Pipeline

GROUP 4: Air and Water Washout Nozzleman; Bio-Filter, Pressman, Installer, Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite; Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using boson's chair or safety belt); Tamper (mechanical all types).

GROUP 5: AC Dumpman, Asbestos Abatement, Asphalt Raker II, Drill Doctor/Air Tool Repairman, Hazardous Waste Removal, Lead Abatement, Lead Pipeman, Process Piping Installer, Scaler (Driller), Pest Technician/Weed Control, Scissor Lift, Hydro Mobile Scaffold Builder.

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\* PAIN0086-001 04/01/2014

Rates

Fringes

PAINTER

PAINTER (Yavapai County  
only), SAND BLASTER/WATER

BLASTER (all Counties) .....\$ 19.50

4.85

ZONE PAY: More than 100 miles from Old Phoenix Courthouse  
\$3.50 additional per hour.

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	Rates	Fringes
CEMENT MASON .....	\$ 19.28	3.99
ELECTRICIAN .....	\$ 22.84	6.48
IRONWORKER (Rebar)		
Pima County .....	\$ 23.17	14.83
Pinal County .....	\$ 20.27	8.35
LABORER		
Asphalt Raker .....	\$ 15.49	3.49
Compaction Tool Operator ...	\$ 14.59	2.91
Concrete Worker .....	\$ 13.55	3.20
Concrete/Asphalt Saw .....	\$ 13.95	2.58
Driller-Core, diamond, wagon, air track .....	\$ 16.94	3.12
Dumpman Spotter .....	\$ 14.99	3.16
Fence Builder .....	\$ 13.28	2.99
Flagger		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma .....	\$ 12.35	1.59
Formsetter .....	\$ 16.09	3.97
General/Cleanup Laborer		
Coconino, Maricopa, Mohave, Pima, Yavapai & Yuma .....	\$ 14.54	3.49
Grade Setter (Pipeline) ...	\$ 17.83	5.45
Guard Rail Installer .....	\$ 13.28	2.99
Landscape Laborer .....	\$ 11.39	
Landscape Sprinkler Installer .....	\$ 15.27	
Pipelayer .....	\$ 14.81	2.96
Powderman, Hydrasonic .....	\$ 16.39	2.58
OPERATOR: Power Equipment		
Asphalt Laydown Machine ....	\$ 21.19	6.05
Backhoe < 1 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma .....	\$ 17.37	3.85
Backhoe < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma .....	\$ 18.72	3.59
Clamshell < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma .....	\$ 18.72	3.59
Concrete Pump (Truck Mounted with boom only)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma .....	\$ 19.92	7.10
Crane (under 15 tons) .....	\$ 21.35	7.36
Dragline (up to 10 cu yd)		
Coconino, Mohave, Pima,		

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Pinal, Yavapai & Yuma .....	\$ 18.72	3.59
Drilling Machine		
(including Water Wells) ...	\$ 20.58	5.65
Grade Checker		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 16.04	3.68
Hydrographic Seeder .....	\$ 15.88	7.67
Mass Excavator .....	\$ 20.97	4.28
Milling Machine/Rotomill ...	\$ 21.42	7.45
Motor Grader (Finish-		
any type power blade)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 21.92	4.66
Motor Grader (Rough)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 20.07	4.13
Oiler .....	\$ 18.15	8.24
Power Sweeper .....	\$ 16.76	4.44
Roller (all types Asphalt)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 18.27	3.99
Roller (excluding asphalt) .	\$ 15.65	3.32
Scraper (pneumatic tired)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 17.69	3.45
Screed		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 17.54	3.72
Shovel < 10 cu yd		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 18.72	3.59
Skip Loader (all types <3		
cu yd) .....	\$ 18.28	5.30
Skip Loader (all types 3 <		
6 cu yd)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 18.64	4.86
Skip Loader (all types 6 <		
10 cu yd) .....	\$ 20.15	4.52
Tractor (dozer, pusher -		
all)		
Coconino, Mohave, Pima,		
Pinal, Yavapai & Yuma .....	\$ 17.26	2.65
PAINTER		
Coconino, Maricopa,		
Mohave, Pima, Pinal & Yuma..	\$ 15.57	3.92
TRUCK DRIVER		
2 or 3 Axle Dump or		
Flatrack .....	\$ 16.27	3.30
5 Axle Dump or Flatrack	\$ 13.97	2.89
6 Axle Dump or Flatrack (<		
16 cu yd) .....	\$ 17.79	6.42
Belly Dump .....	\$ 14.67	
Oil Tanker Bootman .....	\$ 22.03	

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Self-Propelled Street		
Sweeper .....	\$ 13.11	5.48
Water Truck 2500 < 3900		
gallons .....	\$ 18.14	4.55
Water Truck 3900 gallons		
and over .....	\$ 15.92	3.33
Water Truck under 2500		
gallons .....	\$ 15.94	4.16

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract  
clauses (29CFR 5.5 (a) (1) (ii)).

-----  
The body of each wage determination lists the classification  
and wage rates that have been found to be prevailing for the  
cited type(s) of construction in the area covered by the wage  
determination. The classifications are listed in alphabetical  
order of "identifiers" that indicate whether the particular  
rate is a union rate (current union negotiated rate for local),  
a survey rate (weighted average rate) or a union average rate  
(weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed  
in dotted lines beginning with characters other than "SU" or  
"UAVG" denotes that the union classification and rate were  
prevailing for that classification in the survey. Example:  
PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of  
the union which prevailed in the survey for this  
classification, which in this example would be Plumbers. 0198  
indicates the local union number or district council number  
where applicable, i.e., Plumbers Local 0198. The next number,  
005 in the example, is an internal number used in processing  
the wage determination. 07/01/2014 is the effective date of  
the most current negotiated rate, which in this example is  
July 1, 2014.

Union prevailing wage rates are updated to reflect all rate  
changes in the collective bargaining agreement (CBA)  
governing this classification and rate.

#### Survey Rate Identifiers

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Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.)

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and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2. If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator U.S.  
Department of Labor 200  
Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3. If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board U.S.  
Department of Labor 200  
Constitution Avenue, N.W.  
Washington, DC 20210

4. All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

## **ATTACHMENT 4 TO EXHIBIT 4**

### **EQUAL EMPLOYMENT OPPORTUNITY SPECIAL PROVISION 000---006**

#### **Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown

Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Hometown Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all

foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and



maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the contractor's EEO policy and the contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

**8.** Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

**9.** A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

**10.** Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

**11.** The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

**12.** The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

**13.** The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results

from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

**14.** The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

**15.** Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**16.** In addition to the reporting requirements set forth elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit an Annual EEO Report on Form FHWA-1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon. Contractors and subcontractors are required to submit the information in the FHWA-1391 report via LCPtracker system, a labor compliance software monitoring certified payroll and prevailing wage. The staffing figures to be reported should represent the project workforce on board in all or any part of the last annual payroll period preceding the end of July. The report shall be submitted no later than September 1.

## **ATTACHMENT 5 TO EXHIBIT 4**

### **AFFIRMATIVE ACTION SPECIAL PROVISION 000 --- 0004**

#### **Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)**

#### **1. General.**

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth in Attachment 4 to this Exhibit 4, the contractor's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

#### **2. Goals.**

- a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- b. The goals for minority and female participation expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

**Goals for  
minority participation  
in each trade**

**(per-cent)**

See Table 1

**Goals for  
female participation  
in each trade**

**(per-cent)**

6.9%

- c. These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction. The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of

minority and female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

**3. Subcontracting.**

The contractor shall provide written notification to the Department within ten Business Days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

**4. Covered area.**

As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Arizona. The geographical area covered by these goals for other minorities are the boroughs or other geographic areas in the State of Arizona as indicated in Table 1.

**5. Reports.**

The contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>Borough or Other Geographic Area</b>	<b>Goals for Minority Participation</b>	<b>County</b>
State of Arizona	15.8% (minority)	Maricopa County

## **ATTACHMENT 6 TO EXHIBIT 4**

### **APPENDIX A TO DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS: CONTRACTOR ASSURANCES**

Note: Whenever in this Attachment 6 to Exhibit 4 references are made to:

(a) "Acts and Regulations," such reference shall be construed to mean (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin), (ii) 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964); and (iii) 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

(b) "contract," such reference shall be construed to mean Agreement;

(c) "contractor," such reference shall be construed to mean Developer; and

(d) "Recipient," such reference shall be construed to mean ADOT.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

a. withholding payments to the contractor under the contract until the contractor complies; and/or

b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## **ATTACHMENT 7 TO EXHIBIT 4**

### **APPENDIX E TO DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS: PERTINENT NON-DISCRIMINATION AUTHORITIES**

Note: Whenever in this Attachment 7 to Exhibit 4 references are made to:

- (a) “contract,” such reference shall be construed to mean Agreement; and
- (b) “contractor,” such reference shall be construed to mean Developer.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);



- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 — 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to - ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **ATTACHMENT 8 TO EXHIBIT 4**

### **COMPLIANCE WITH FEDERAL IMMIGRATION LAWS**

#### **Part A – General**

In accordance with Arizona Executive Order 2005-30, Developer and all Subcontractors shall comply with all State and federal laws applicable to immigration, including federal law and regulations relating to the immigration status of their employees who perform services under the Agreement.

Developer shall include the provisions of this Attachment 8 to Exhibit 4 in all Subcontracts. In addition, Developer shall: (1) require that all Subcontractors comply with the provisions of this Attachment 8 to Exhibit 4; (2) monitor such Subcontractors' compliance; and (3) assist ADOT in any compliance verification regarding any Subcontractor.

#### **Part B – Compliance Requirements for A.R.S. § 41-4401, Government Procurement, E-Verify Requirement; Warranties**

Developer warrants that Developer and all Subcontractors are and shall remain in compliance with:

- (1) All State and federal laws applicable to immigration, including federal law and regulations relating to the immigration status of their employees who perform services under the Agreement; and
- (2) ARS section 23-214, subsection A (which reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.").

#### **Part C – Compliance Verification**

In accordance with Arizona Executive Order 2005-30, ADOT shall retain the legal right to, and may at any time during the Term, inspect the papers of any employee of Developer or any Subcontractor who works under the Agreement to ensure compliance with the warranties set forth in Part B, above.

If ADOT requests from Developer evidence of such compliance, Developer shall complete and return to ADOT the State Contractor Employment Record Verification Form and Employee Verification Worksheet (which ADOT will provide to Developer) no later than 21 days from Developer's receipt of such request.

Listing of the compliance verification procedure described in this Part C shall not preclude ADOT from utilizing other means to determine compliance with the warranties

set forth in Part B, above.

#### **Part D— Sanctions for Non-Compliance**

For purposes of this Part D, non-compliance refers to either Developer's or any Subcontractor's breach of the warranties set forth in Part B, above, or Developer's failure to comply with the compliance verification procedure described in Part C, above. Such non-compliance shall be deemed a material breach of the Agreement, subjecting Developer to the remedies set forth in this Part.

ADOT will reduce Developer's compensation under the Agreement for non-compliance as follows:

- (3) \$10,000 for Developer's and any Subcontractor's first instance of non-compliance;
- (4) \$10,000 for Developer's and any Subcontractor's subsequent non-compliance occurring more than two years after the Developer's or the Subcontractor's, as applicable, preceding non-compliance; and
- (5) \$50,000 for Developer's or any Subcontractor's subsequent non-compliance occurring less than two years after the Developer's or the Subcontractor's, as applicable, preceding non-compliance.

If either Developer or any Subcontractor is in non-compliance more than three times within a two-year period, then, in addition to the monetary sanctions set forth in this Part D, ADOT may apply other remedies available under the Contract Documents, including the following:

- (1) In the case of Developer, ADOT may (a) suspend the Work for cause in accordance with Section 18.2.1(i) of the Agreement, (b) declare a Developer Default under Section 19.1.1(i) of the Agreement, and (c) if such Developer Default is not cured within the applicable cure period, terminate the Agreement in accordance with Section 19.2.1 of the Agreement.
- (2) In the case of any Subcontractor, ADOT may (a) suspend the Subcontractor's Work for cause in accordance with Section 18.2.1(i) of the Agreement, and (b) require that Developer terminate the corresponding Subcontract, in which case the Subcontractor will be prohibited from participating in ADOT contracts for a minimum of one year after said termination (and, if applicable, the Subcontractor's prequalification status with ADOT will be revoked).

If ADOT exercises its right to terminate the Agreement or any Subcontract, as provided in this Part D, then after the minimum one-year suspension period, the terminated party may be considered eligible to participate in subsequent ADOT contracts, but only after successfully demonstrating, to the satisfaction of ADOT, that

the party's hiring practices comply with the requirements specified herein. If considered eligible, the terminated party shall be required to apply or reapply, if applicable, for ADOT prequalification and be accepted prior to bidding on ADOT contracts. For purposes of considering suspension from participating in ADOT contracts: (1) non-compliance by a Subcontractor does not count as a violation by Developer, and (2) ADOT will count instances of non-compliance on other ADOT contracts.

Developer and Subcontractors may appeal suspensions from participating in ADOT contracts to the State Engineer. Appeals must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. Appeals must be received by the State Engineer no later than seven days after ADOT's determination. The State Engineer will promptly consider appeals and notify the interested party of the State Engineer's findings and decision. The State Engineer's decision shall be considered administratively final.

Any delay resulting from a compliance verification or exercise of a remedy under this Attachment 8 is a non-excusable delay. Accordingly, Developer shall not be entitled to any compensation or extension of time for any delays or additional costs resulting from a compliance verification or exercise of a remedy.

An example of the minimum sanctions under this Part D is presented in the following table:

Non-compliance by:			Minimum Reduction in Developer's Compensation
Developer	Subcontractor A	Subcontractor B	
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000*
* May, in addition, result in termination of the Subcontractor, prohibition from participating in ADOT contracts, and revocation of any ADOT prequalification that the Subcontractor may have obtained.			

## **ATTACHMENT 9 TO EXHIBIT 4**

### **COMPLIANCE WITH CARGO PREFERENCE ACT**

In accordance with FHWA's Memorandum dated December 11, 2015 on "Implementation of Cargo Preference Act Requirements in the Federal-aid Highway Program," Developer and all construction Subcontractors shall comply with the Cargo Preference Act of 1954 (46 U.S.C. §55305) and its implementing regulations (46 CFR Part 381). Without limiting the foregoing, Developer agrees:

(a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;

(b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to both ADOT (through Developer in the case of Subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

(c) To insert the substance of these provisions in all construction Subcontracts.

## **EXHIBIT 5**

### **SUBCONTRACTOR REQUEST FORMS**

Exhibit 5-1	Professional Services Subcontractor Request Form
Exhibit 5-2	Construction & Maintenance Subcontractor Request Form

**EXHIBIT 5-1**

**PROFESSIONAL SERVICES SUBCONTRACTOR REQUEST FORM**

**[See attached]**

Subcontractor	_____	ADOT TRACS No.	_____
AZ UTRACS No.	_____	ADOT Project No.	_____
Street Address	_____	Developer	_____
Telephone No.	_____	Telephone No.	_____
City, State, ZIP	_____	Developer Amount	_____
Email Address (required)	_____	Estimated Subcontract Amount	_____
Contact Name (printed)	_____		
Subcontractor Fed EIN No.	_____		
Lower tier to:	_____		
DBE: <input type="checkbox"/> Yes (documentation may be required) <input type="checkbox"/> No			

Subcontractor Work Scope Items (Provide description of Work)	\$ Amounts

Developer certifies it shall provide to ADOT an executed copy of the Subcontract authorized under this Subcontractor Request Form as and when required pursuant to Section 9.4.2.3 of the Agreement.

Authorized Developer Signature		Authorized Subcontractor Signature		Authorized Lower-Tier Signature	
Title	Date	Title	Date	Title	Date
DBE Liaison Signature					
Title	Date				

Percent of total Professional Services Work subcontracted on the Project to date.	%
Total amount of Professional Services Work subcontracted on the Project to date.	\$
Subcontract(s) in Field Reports:	<input type="checkbox"/> Yes <input type="checkbox"/> No

Design-Build-Maintain Agreement  
202 MA 054 H882701C  
Exhibits



**EXHIBIT 5-2**

**CONSTRUCTION & MAINTENANCE SUBCONTRACTOR REQUEST FORM**

**[See attached]**

**ARIZONA DEPARTMENT OF TRANSPORTATION  
CONSTRUCTION & MAINTENANCE SUBCONTRACTOR REQUEST FORM (SRF)  
P3 Project – Design-Build-Maintain**

Subcontractor \_\_\_\_\_  
 AZ UTRACS No. \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City, State, ZIP \_\_\_\_\_  
 Telephone No. \_\_\_\_\_  
 Email Address (required) \_\_\_\_\_  
 Contact Name (printed) \_\_\_\_\_  
 Subcontractor R.O.C. No. & Class \_\_\_\_\_  
 Subcontractor Fed EIN No. \_\_\_\_\_  
 Lower tier to: \_\_\_\_\_

ADOT TRACS No. H882701C  
 ADOT Project No. 202-D-(202)S  
 Developer Connect 202 Partners, LLC  
 Telephone No. \_\_\_\_\_  
 Developer Amount \$  
 Estimated Subcontract Amount \$  
 Type of Work:  
☐ Construction Work   ☐ Capital Asset Replacement Work  
☐ Routine Maintenance

Labor Compliance Name (printed) \_\_\_\_\_  
 Labor Compliance Email (required) \_\_\_\_\_

a)  
**I CERTIFY THAT I AM A BONA FIDE TRUCK OWNER/OPERATOR**

DBE: ☐ Yes (documentation may be required) ☐ No

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Subcontracted Bid Item Nos.**

(Check box and provide dollar amount for joint/partial items)

☐ \$ \_\_\_\_\_  
☐ \$ \_\_\_\_\_  
☐ \$ \_\_\_\_\_  
☐ \$ \_\_\_\_\_

**Subcontracted Description of Work**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**CERTIFICATION**

Developer certifies the following:

- A. Developer shall provide to ADOT an executed copy of the Subcontract authorized under this Subcontractor Request Form as and when required pursuant to Section 9.4.2.3 of the Agreement;
- B. Upon execution of the Subcontract authorized under this Subcontractor Request Form, Developer shall provide to Field Office and Field Reports (i) copies of the executed Subcontract containing the above bid items of Work, and (ii) a signed Certification with Regard to the Performance of Previous Contracts or Subcontracts Subject to the EEO Clause and Filing of Required Reports, April 1969;
- C. Before commencing work under the Subcontract authorized under this Subcontractor Request Form, Developer shall provide to the Subcontractor copies of the documents listed below.
  1. Contract Documents (Agreement and Technical Provisions);
  2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246, rev. April 15, 1981);
  3. Standard Federal Equal Employment Opportunity Construction Specifications (Executive Order 11246, rev. April 15, 1981);
  4. Form FHWA 1273 (rev. May 1, 2012);
  5. EEO Compliance Reports (rev. August 1, 2005);
  6. DBE Special Provisions (Exhibit 7 of DBMA Agreement);
  7. OJT Special Provisions (Exhibit 8 of DBMA Agreement); and
  8. Federal Prevailing Wage Rates (Attachment 3 to Exhibit 4 to the Agreement) no. AZ2015008 Mod # 3.

Authorized Developer Signature	Authorized Subcontractor Signature	Authorized Lower-Tier Signature
Title	Title	Title
Date	Date	Date
DBE Liaison Signature		
Title	Date	

**FOR ADOT USE ONLY**

Percent of Construction Work/Capital Asset Replacement Work subcontracted on the Project to date: \_\_\_\_\_ %  
 Total amount of Construction Work/Capital Asset Replacement Work subcontracted on the Project to date: \$  
 Subcontract in Field Reports: ☐ Yes ☐ No

For Assistant State Engineer – Construction & Materials	Date	Field Reports	Date
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## **EXHIBIT 6**

### **MAXIMUM ALLOWABLE CUMULATIVE DRAW SCHEDULE**

<b>Months after NTP 1</b>	<b>Anticipated Draw / Cash Flow*</b>	<b>Developer's Cumulative Draw / Maximum Allowable Cumulative Draw*</b>
1	\$18,427,751.99	\$18,427,751.99
2	\$12,554,153.05	\$30,981,905.04
3	\$14,321,344.76	\$45,303,249.80
4	\$8,211,650.06	\$53,514,899.86
5	\$20,831,099.97	\$74,345,999.83
6	\$18,952,141.36	\$93,298,141.19
7	\$9,233,650.61	\$102,531,791.80
8	\$9,107,074.07	\$111,638,865.87
9	\$9,125,072.03	\$120,763,937.90
10	\$20,839,333.95	\$141,603,271.85
11	\$10,412,900.04	\$152,016,171.89
12	\$12,798,885.08	\$164,815,056.97
13	\$15,446,165.37	\$180,261,222.34
14	\$17,344,378.65	\$197,605,600.99
15	\$15,828,769.02	\$213,434,370.01
16	\$18,545,936.14	\$231,980,306.15
17	\$20,662,150.29	\$252,642,456.44
18	\$21,087,569.19	\$273,730,025.63
19	\$24,986,720.10	\$298,716,745.73
20	\$26,146,473.68	\$324,863,219.41
21	\$26,459,530.37	\$351,322,749.78

<b>Months after NTP 1</b>	<b>Anticipated Draw / Cash Flow*</b>	<b>Developer's Cumulative Draw / Maximum Allowable Cumulative Draw*</b>
22	\$29,073,577.45	\$380,396,327.23
23	\$27,765,421.62	\$408,161,748.85
24	\$25,254,863.27	\$433,416,612.12
25	\$27,622,162.35	\$461,038,774.47
26	\$29,558,720.87	\$490,597,495.34
27	\$28,604,860.34	\$519,202,355.68
28	\$28,168,444.56	\$547,370,800.24
29	\$28,168,444.56	\$575,539,244.80
30	\$28,168,444.56	\$603,707,689.36
31	\$28,134,606.09	\$631,842,295.45
32	\$28,134,606.09	\$659,976,901.54
33	\$28,497,992.49	\$688,474,894.03
34	\$30,455,657.21	\$718,930,551.24
35	\$27,447,845.34	\$746,378,396.58
36	\$26,583,794.03	\$772,962,190.61
37	\$24,538,191.08	\$797,500,381.69
38	\$24,710,511.08	\$822,210,892.77
39	\$23,417,591.44	\$845,628,484.21
40	\$17,984,184.36	\$863,612,668.57
41	\$15,647,247.51	\$879,259,916.08
42	\$12,537,755.59	\$891,797,671.67
43	\$10,731,741.26	\$902,529,412.93
44	\$8,688,095.89	\$911,217,508.82
45	\$3,181,629.56	\$914,399,138.38

<b>Months after NTP 1</b>	<b>Anticipated Draw / Cash Flow*</b>	<b>Developer's Cumulative Draw / Maximum Allowable Cumulative Draw*</b>
46	\$733,898.54	\$915,133,036.92
47	\$571,491.55	\$915,704,528.47
48	\$420,871.16	\$916,125,399.63
49	\$162,407.00	\$916,287,806.63
50	\$137,188.43	\$916,424,995.06
51	\$124,183.07	\$916,549,178.13

\* All amounts shown are in nominal dollars.

**EXHIBIT 7**

**ADOT'S DBE SPECIAL PROVISIONS**

**[See next page]**

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## **DBE SPECIAL PROVISIONS**

### **1.0 POLICY**

The Arizona Department of Transportation (hereinafter referred to as ADOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, ADOT has signed an assurance that it will comply with 49 CFR Part 26. The regulations require that Developer take necessary and reasonable steps to ensure that DBEs have an equal and fair opportunity to compete for and perform the Agreement. These special provisions provide detailed information about these requirements, and identify Developer's responsibilities to demonstrate compliance with the requirements.

It is the policy of ADOT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted agreements. It is also the policy of ADOT to:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. Assist in the development of firms that can compete successfully in the market place outside of the DBE program.
7. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities.
8. Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

It is also the policy of ADOT to facilitate and encourage participation of Small Business Concerns (SBCs) in USDOT-assisted contracts, as defined in Section 3.0 of these DBE Special Provisions. ADOT encourages Developer to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing the Work.

### **2.0 ASSURANCES OF COMPLIANCE AND NON DISCRIMINATION**

Any Developer, Subcontractor, Supplier, DBE firm, and Guarantor involved in the performance of work on a federal-aid agreement shall familiarize themselves with and comply with the terms

and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), and these DBE Special Provisions.

In accordance with 49 CFR Part 26 and these DBE Special Provisions, Developer, for itself and for its Subcontractors and Suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal requirements and these DBE Special Provisions. Developer agrees to assume these contractual obligations and to bind Developer's Subcontractors contractually to the same at Developer's expense.

### **3.0 DEFINITIONS AND FORMS**

#### **3.01 Definitions**

- (A) **Commercially Useful Function (CUF):** Commercially Useful Function and how to credit DBE participation is set out fully in 49 CFR 26.22. In part, 49 CR 26.55(c) defines CUF as follows:

A DBE performs a commercially useful function when it is responsible for execution of the Work of the Agreement and carries out its responsibilities by actually performing, managing, and supervising, the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Project, for negotiating price, determining quality and quantity, ordering and installing (where applicable) materials, and paying for the materials itself that it uses on the contract. To determine where a DBE is performing a commercially useful function, ADOT must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- (B) **Committed DBE:** A committed DBE is a DBE that was identified by Developer, typically on a DBE Intended Participation Affidavit form, to meet DBE Goals as a condition of performance, and includes any substituted DBE that has subsequently entered into a Subcontract to meet assigned contract goals.

- (C) **Compliance Oversight Committee:** Interdisciplinary team responsible for monitoring and overseeing DBE compliance and progress towards meeting DBE goals on the Project.

- (D) **Disadvantaged Business Enterprise (DBE):** A for-profit small business concern, which meets both of the following requirements:

- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and

- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business.
- (E) **Joint Check:** a two-party check between a Subcontractor, DBE and/or non-DBE, a Developer and/or the regular dealer of material supplies.
- (F) **Joint Venture:** An association of a DBE firm with one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the Agreement and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- (G) **NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
- (H) **Non-DBE:** Any firm that is not a DBE.
- (I) **Race-conscious:** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- (J) **Race-neutral:** A measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- (K) **Small Business Concern (SBC):** A business that meets all of the following conditions:
  - (1) Operates as a for-profit business registered to do business in Arizona;
  - (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
  - (3) Is independently owned and operated;
  - (4) Is not dominant in its field on a national basis; and
  - (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.
- (L) **Socially and Economically Disadvantaged Individuals:** Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) "Women;"
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

### **3.02 List of Forms**

The following forms are referenced in and attached to these DBE Special Provisions or the Agreement. All forms are also available at [www.azdot.gov/bec](http://www.azdot.gov/bec) and from the BECO, 1135 N. 22nd Avenue (second floor), mail drop 154A, Phoenix, Arizona 85009, phone (602) 712-7761.

<b>Name of Form</b>	<b>Attachment to DBE Special Provisions</b>
Construction DBE Intended Participation Affidavit Summary	Attachment A
Construction DBE Intended Participation Affidavit Individual	Attachment B
Professional Services DBE Intended Participation Summary	Attachment C
Professional Services DBE Intended Participation Individual	Attachment D
Professional Services Subcontractor Request Form	Exhibit 5-1 to the Agreement (not attached to DBE Special Provisions)
Construction & Maintenance Subcontractor Request Form	Exhibit 5-2 to the Agreement (not attached to DBE Special Provisions)
Bidder's List of Subcontractors and Suppliers	Attachment E
DBE Monthly Utilization Progress Report	Attachment F
Monthly DBE Subcontractor Payment Form	Attachment G
Monthly Non-DBE Subcontractor Payment Form	Attachment H
DBE Certificate of Final Payments Construction and Professional Services	Attachment I
Summary of Final Payments for Construction	Attachment J
Summary of Final Payments for Professional Services	Attachment K
DBE Substitution or Termination Request	Attachment L

#### **4.0 WORKING WITH DBES**

ADOT works with DBEs and assists them in their efforts to participate in the highway construction program. All Developers should contact ADOT's Business Engagement and Compliance Office (BECO) by phone or through email, or at the address shown below, for assistance in their efforts to use DBEs on projects. BECO contact information is as follows:

Arizona Department of Transportation  
Business Engagement and Compliance Office  
1135 N. 22nd Avenue (second floor), Mail Drop 154A  
Phoenix, AZ 85009

Phone (602) 712-7761  
FAX (602) 712-8429  
Email: DeveloperCompliance@azdot.gov

## **5.0 APPLICABILITY**

ADOT has established an overall annual goal for DBE participation on Federal-aid agreements. ADOT intends for the goal to be met with a combination of race conscious and race neutral efforts. Race conscious participation occurs where Developer uses a percentage of DBEs, as defined herein, to meet the contract-specific goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a contract through customary competitive procurement procedures or is awarded a subcontract on a contract that does not carry a DBE contract goal.

Developer shall meet the DBE Goals specified in the Agreement, or establish that it was unable to meet the DBE Goals despite making Good Faith Efforts to do so. Developer is encouraged to obtain DBE participation above and beyond the DBE Goals.

## **6.0 CERTIFICATION AND REGISTRATION**

### **6.01 DBE Certification**

Certification as a DBE shall be predicated on:

1. The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
2. The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
3. The submission of any additional information that ADOT may require to determine the firm's eligibility to participate in the DBE program.
4. The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with ADOT at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at [www.adot.dbesystem.com](http://www.adot.dbesystem.com).

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is grounds for denial or removal of certification.

Arizona is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT's projects. A list of DBE firms certified by the AZUCP is available on the Internet at [www.adot.dbesystem.com](http://www.adot.dbesystem.com). The list will indicate contact information and types of work for which each DBE firm is certified. ADOT does not

guarantee the accuracy and/or completeness of this information, nor does ADOT represent that the DBE has the necessary licenses or registrations to perform the work.

ADOT's certification of a DBE is not a representation of qualifications and/or abilities, but only that it has met the criteria for DBE certification as outlined in 49 CFR Part 26. Developer bears all risks of ensuring that DBE firms that Developer selects to work on the Project are able to perform the Work.

## **6.02 SBC Registration and Utilization**

49 CFR Part 26.39 requires that ADOT's DBE Program include an element to incorporate contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted-contracts. SBCs are for-profit businesses that are registered with ADOT to do business in Arizona and meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code. SBCs can register online at the AZ UTRACS website at [www.adot.dbesystem.com](http://www.adot.dbesystem.com).

ADOT's registration of SBCs is not a representation of qualifications and/or abilities. Developer bears all risks of ensuring that SBC firms that Developer selects to work on the Project are able to perform the Work.

While the SBC component of the DBE program does not require utilization goals on the Project, ADOT strongly encourages Developer to utilize small businesses on this Project that are registered as SBCs in AZ UTRACS, in addition to DBEs meeting the certification requirement. Developer and its Subcontractors can visit AZ UTRACS at <https://adot.dbesystem.com/> to search for registered SBCs that can be used on the Project. However, note that SBCs that are not DBEs shall not be counted towards meeting DBE Goals.

## **7.0 DBE FINANCIAL INSTITUTIONS**

ADOT thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the state of Arizona and makes reasonable efforts to use these institutions. ADOT encourages Developer to use such institutions on USDOT assisted-contracts. However, use of a DBE financial institution will not be counted toward DBE Goals.

ADOT encourages Developer to research the Federal Reserve Board website at [www.federalreserve.gov](http://www.federalreserve.gov) to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

## **8.0 TIME IS OF THE ESSENCE**

TIME IS OF THE ESSENCE IN RESPECT TO THESE DBE PROVISIONS.

## **9.0 COMPUTATION OF TIME**

In computing any period of time described in this DBE Special Provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period

is a Saturday, Sunday, Federal, or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday.

## **10.0 DBE GOALS**

Only DBE firms certified in the State of Arizona Unified Certification Program (AZUCP) prior to the DBE starting work on the Project shall count toward attaining the DBE Goals. Developer, as part of its Good Faith Efforts to meet the DBE Goals, may expand its search to a reasonably wider geographic area, including other states, provided that all out of state DBEs submit applications to ADOT to become certified in Arizona prior to beginning any Work for DBE credit.

## **11.0 DBE PARTICIPATION ABOVE THE GOAL (RACE NEUTRAL PARTICIPATION)**

Additional DBE participation above the DBE participation required to meet the DBE Goals is an important aspect of ADOT's DBE program. Developer is strongly encouraged to use additional DBEs above the DBE Goals in performing the Work in an effort to help ADOT meet its overall DBE goal and help ADOT meet the maximum feasible portion of its DBE goals through race neutral as outlined in 49 CFR Part 26. There are fewer administrative requirements on the part of Developer when using race neutral DBEs (DBEs not listed on the Construction DBE Intended Participation Affidavit Summary to meet DBE contract goals). For example, if a DBE is not listed on the Construction DBE Intended Participation Affidavit Summary, Developer does not have to submit a Construction DBE Intended Participation Affidavit Individual form, Developer's Subcontract certification process follows the same process of any other Subcontract, and Developer does not have to replace the DBE if the DBE fails to perform. Therefore these DBEs are treated as any other Subcontractor on the Project but will count towards the overall DBE utilization.

## **12.0 DBE POST AWARD SUBMISSIONS**

### **12.01 Final DBE Utilization Plan (After NTP 1)**

Within 30 days after issuance of NTP 1, Developer shall revise and convert its Preliminary DBE Utilization Plan included in its Proposal into a more detailed, final DBE Utilization Plan and submit it to ADOT for approval in its good faith discretion, as more particularly set forth in Section 9.2.5 of the Agreement.

In an effort to verify compliance with DBE requirements, ADOT will evaluate throughout the course of the work Developer's efforts to execute its approved DBE Utilization Plan. Developer shall manage the approved DBE Utilization Plan to achieve the DBE Goals and to provide documentation that it is making Good Faith Efforts to do so. Developer, through consultation with ADOT, shall revise and update the DBE Utilization Plan at least quarterly prior to Substantial Completion, or more frequently as appropriate, detailing changes in or additional Good Faith Efforts it will undertake to meet the DBE Goals and how it will make up for any shortfalls in projected DBE utilization. All official revisions must be submitted to ADOT for review and approval.

### **12.02 DBE Commitment Affidavits (After NTP 1)**

Not less than 12 days before any Design Work begins on the Project, Developer shall submit to ADOT for review and comment Professional Services DBE Intended Participation Affidavit Summary for each DBE firm identified at that time to perform initial Design Work. Thereafter, as



each further Professional Services DBE is identified, Developer shall submit to ADOT for review and comment, not less than 12 days before such DBE commences Design Work, a Professional Services DBE Intended Participation Affidavit Individual form for such DBE. Developer shall receive no DBE credit for Professional Services performed by DBEs prior to the required submission and resolution of any comments from ADOT.

Not less than 12 days before (a) beginning any Construction Work on the Project, or (b) beginning any Capital Asset Replacement Work, Developer shall submit to ADOT for review and comment Construction DBE Intended Participation Affidavit Summary for each DBE firm identified at that time to perform Construction Work or Capital Asset Replacement Work. Thereafter, as each further Construction DBE or Capital Asset Replacement Work DBE is identified, Developer shall submit to ADOT for review and comment, not less than 12 days before such DBE commences Construction Work or Capital Asset Replacement Work, a Construction DBE Intended Participation Affidavit Individual form for such DBE. Developer shall receive no DBE credit for Construction Work or Capital Asset Replacement Work performed by DBEs prior to the required submission and resolution of any comments from ADOT.

Developer shall submit a Professional Services or Construction DBE Intended Participation Affidavit from each individual DBE Subcontractor or Supplier procured to work on the Project, on and subject to the following terms and conditions.

1. All forms must be accurate and complete in every detail and must be signed by an officer of Developer. Percentages and dollar amounts must be accurate, listed to two decimal places and not rounded up or down.
2. A separate DBE Intended Participation Affidavit must be submitted for each DBE used to meet the DBE Goals. Developer shall indicate each DBE's name, address, a description of the work the DBE will perform, proposed Subcontract amount and the NAICS code applicable to the kind of work the firm would perform on the Project. A list of certified DBEs with their respective NAICS code can be located on the DBE Directory at AZ UTRACS website [www.adot.dbesystem.com](http://www.adot.dbesystem.com). All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item. The intended DBE must complete and sign the form, as specified therein, to confirm its participation.
3. Developer must determine DBE credit in accordance with Section 16.0 of these DBE Special Provisions, entitled "Crediting DBE Participation Toward Meeting Goal."
4. Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) will be considered for DBE credit. It shall be Developer's responsibility to ascertain the certification status of designated DBEs to be used on the Project and to encourage any out-of-state DBEs to become certified in Arizona.
5. All DBE commitment amounts must be finalized between the DBE and Developer prior to submittal of DBE Intended Participation Affidavits. Developer is not permitted to inflate DBE awards or overstate DBE award amounts on a DBE Intended Participation Affidavit with the knowledge that the DBE will actually perform a small portion of the Work. Reduction of DBE commitment amounts after submittal of the DBE Intended Participation Affidavit and resolution of ADOT's comments thereon, whether occurring prior to or after the DBE firm

starts Work on the Project, without good cause, may be grounds for ADOT declaring that Developer has failed to make Good Faith Efforts, and Developer may be subject to remedies for such failure as outlined in Section 15.01 "Continuing Good Faith Efforts" of these DBE Special Provisions. Scheduling conflicts are not evidence of good cause as this should have been considered prior to submittal of DBE Intended Participation Affidavits. Since Developer is required to use ADOT-approved DBEs submitted on DBE Intended Participation Affidavit forms to meet DBE Goals, Developer is responsible for ensuring DBEs are available and ready to perform when needed on the Project prior to submission of DBE Intended Participation Affidavits.

6. Developer bears the risk of late submission or late delivery by the postal service or a delivery service. Late submittal of DBE Intended Participation Affidavits may result in denial of DBE credit.

ADOT may reject the DBE Intended Participation Affidavit if it is inaccurate or incomplete, including for lack of accurate and complete DBE certification and licensing information. ADOT shall have the right to review DBE Intended Participation Affidavits to ensure that DBEs are certified and licensed for the type of Work being proposed. If Developer fails to correctly complete and submit a DBE Intended Participation Affidavit within the specified time frame and fails to resolve ADOT comments thereon before the DBE begin Work on the Project, ADOT may deny DBE credit and/or will withhold progress payments until such time as the required submissions are received and all ADOT comments are resolved.

### **12.03 DBE Subcontractor Request Forms**

During the course of the Work, Developer shall submit to ADOT copies of completed and signed Professional Services or Construction & Maintenance Subcontractor Request Forms along with copies of Subcontracts, purchase orders, invoices, and all other required documents for all Committed DBEs, at all tiers, that were listed on a Professional Services or Construction DBE Intended Participation Affidavit pursuant to Section 12.02 of these DBE Special Provisions.

Professional Services or Construction & Maintenance Subcontractor Request Forms, executed Subcontracts and all required documents outlined on the forms, must be submitted to ADOT for Committed DBEs, 15 days prior to start of work. Developer shall submit all other types of Subcontracts pursuant to Section 9.4.2.3 of the Agreement.

If Developer fails to correctly complete and submit a Professional Services or Construction & Maintenance Subcontractor Request Form and executed DBE Subcontract within the specified time frames and fails to resolve all comments from ADOT before the DBE begins work on the Project, ADOT may deny DBE credit and/or will withhold progress payments until such time as the required submissions are received and ADOT comments thereon resolved.

### **12.04 DBE and Subcontractor Information Upload to DBE System (After NTP 2)**

Within 15 days after a DBE Subcontractor/Supplier request is processed by ADOT pursuant to Section 12.03 of these DBE Special Provisions, and before the DBE begins work on the Project, Developer shall log into ADOT's web-based DBE System (<https://adot.dbesystem.com>) and enter and/or verify that the following information, at a minimum, is uploaded into the system. Such entry and verification of information is required in order to register commitments made

through the DBE Intended Participation Affidavits, and to track DBE utilization for each DBE Goal, Subcontractor payments and prompt pay requirements:

1. Name of DBE Subcontractor or Supplier
2. Contact information
3. Subcontract amount
4. Subcontract award date
5. Estimated work start date
6. Work description

Developer must also ensure that the same information is entered into ADOT's web-based DBE System for all Non-DBE Subcontractors/Suppliers. This information must be entered and/or verified in ADOT's web-based DBE System monthly throughout the course of the D&C Work as all DBE, as well as Non-DBE, Subcontracts are executed by Developer.

#### **12.05 Bidders List – AZUTRACS Vendor Registration**

49 CFR Part 26.11 require DOTs to collect certain information from all contractors and Subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects some of this information via a Bidder's List of Subcontractors and Suppliers and the rest of the information is collected when firms register their companies as a vendor on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal; a centralized database for companies that are "ready, willing and able" to do business with ADOT. ADOT uses the Bidder's List and AZ UTRACS Vendor Registration information to help calculate ADOT's triennial and individual DBE contract goals. This information will be maintained as confidential to the extent allowed by federal and state law.

Developer must also maintain Bidder's Lists throughout the D&C Work with the name, contact information, and other required information listed on the Bidder's List form for every firm quoting, bidding or expressing an interest in providing subcontract services for the Project. Developer must submit Bidder's List forms with the required information outlined on the forms every month for all new firms that quote, bid or express interest in Subcontracts with Monthly DBE Utilization Progress Reports as outlined in Section 18.02.2 of these DBE Special Provisions.

Along with submitting Bidder's Lists monthly, Developer shall ensure that all Subcontractors are registered as a vendor in AZUTRACS and provide an AZUTRACS Vendor Number for each Subcontractor on the Bidder's List form submitted each month.

To determine if a Subcontractor is registered as a vendor, search by firm name at: <https://adot.dbesystem.com/FrontEnd/VendorSearchRegistry.asp?TN=adot&XID=5475>. If the firm is listed at the bottom of the page in the Search Results, it is registered as a vendor. If it is not listed, the firm shall register by going to this website <https://adot.dbesystem.com/FrontEnd/StartRegistry.asp?TN=adot&XID=6761>.

Visit the AZ UTRACS website at: <https://adot.dbesystem.com> for further information or contact the BECO Contract Compliance Office at (602) 712-7761, or email [contractorcompliance@azdot.gov](mailto:contractorcompliance@azdot.gov).

If Developer fails to correctly complete and submit Bidder's List of Subcontractors and Suppliers that bid, quoted or expressed interest in working on the Project each month, with the monthly reports required pursuant to Section 18.01 of these DBE Special Provisions, ADOT may withhold payment until such time as ADOT receives the required submissions.

### **13.0 DBE LIAISONS AND COMPLIANCE OVERSIGHT COMMITTEE**

#### **13.01 DBE Liaisons**

ADOT's Business Engagement & Compliance Office's Contract Compliance & Training Officer, in conjunction with the ADOT Project Manager or other designated representative, are ADOT's primary DBE liaisons with Developer regarding DBE compliance monitoring and oversight for this Project.

Developer shall establish a DBE program administration process that will ensure nondiscrimination in the award and administration of contracts and subcontracts and shall eliminate barriers to the participation of DBEs and small businesses on the Project. Developer's DBE/OJT Outreach and Compliance Manager shall be responsible for the management and implementation of Developer's DBE Utilization Plan and shall report to Developer's Project Manager. This individual shall serve as Developer's DBE liaison with ADOT for the Project. The name of this designated DBE liaison shall be included on all DBE Intended Participation Affidavit Summary forms.

#### **13.02 Compliance Oversight Committee**

ADOT will convene an interdisciplinary Compliance Oversight Committee to monitor and oversee DBE compliance and progress towards meeting DBE Goals. The Compliance Oversight Committee will include representatives of ADOT's General Engineering Consultant (GEC) for the Project, FHWA, ADOT's Business Engagement & Compliance Office and other entities. Developer's DBE liaison and Project Manager (or designee responsible for the management of professional services and construction activities of the Project) shall meet with the Compliance Oversight Committee on a monthly basis. In addition, during any significant Capital Asset Replacement Work, Developer's DBE liaison and Maintenance Manager (or designee responsible for the management of the Capital Asset Replacement Work) shall meet with the ADOT BECO compliance staff on an as-needed basis. The purpose of the monthly meetings will be to review information in the submitted DBE Monthly Utilization Progress Reports, and monitor whether the utilization of DBEs is consistent with Developer's DBE commitment and approved DBE Utilization Plan. The Compliance Oversight Committee will also review procurements and DBE participation from the previous month, review projected DBE procurements/participation for upcoming months, review Developer's Good Faith Efforts to meet DBE Goals, identify and resolve impediments to successful DBE participation, and proactively work to resolve any DBE compliance issues that may arise.

### **14.0 DBE COMPLIANCE RECORDS**

Developer shall keep documents and records pertaining to DBE outreach, participation, procurements, utilization, payments, Good Faith Efforts and other compliance activities for five

years after the Substantial Completion Date. These records and documents shall be subject to ADOT's rights of inspection, copying and audit set forth in Sections 23.4 and 23.5 of the Agreement.

## **15.0 CONTINUING GOOD FAITH EFFORTS AND CONTRACT PERFORMANCE**

### **15.01 Continuing Good Faith Efforts**

The following is a list of the minimum types of continuing Good Faith Efforts Developer must make during the D&C Work and Capital Asset Replacement Work to help ensure that DBEs have optimal opportunity to successfully perform on the Project and that Developer meet the DBE Goals. These efforts shall include the following:

1. Contacting ADOT's BECO to request assistance as needed to help identify certified DBEs, either by e-mail, or by telephone. Developer must document its contact with BECO, and indicate the type of contact, the date and time of the contact, the name of the person(s) contacted, and any details related to the communication. The telephone number for the BECO is (602) 712-7761 and the email address is [contractorcompliance@azdot.gov](mailto:contractorcompliance@azdot.gov). The contact must be made in sufficient time before the DBE is needed to allow BECO to provide effective assistance. Developer will not be considered to have made Good Faith Efforts if Developer fails to contact the BECO and communicate any difficulties in finding DBEs.
2. Conducting market research to identify small business Subcontractors and Suppliers and soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the relevant Work. This may include attending pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of notices of sources sought and/or requests for proposals at reasonable locations, including Developer's website, written notices or emails to all DBEs listed in ADOT's directory of transportation firms that specialize in areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the Project. Developer shall solicit this interest as early in the acquisition process as practicable to allow DBEs to respond to the solicitation and submit a timely offer for the Subcontract. Developer shall determine with certainty if DBEs are interested by taking appropriate steps to follow-up initial solicitations.
3. Selecting portions of the relevant Work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Project work items into economically feasible units (for example smaller tasks or quantities) to facilitate DBE participation, even when Developer might otherwise prefer to perform these Work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
4. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Project in a timely manner to assist them in responding to a solicitation with their offer for the Subcontract.

5. Negotiating in good faith with interested DBEs. It is Developer's responsibility to make a portion of the relevant Work available to the DBE Subcontractors and Suppliers, and to select those portions of relevant Work or material needs consistent with the available DBE Subcontractors and Suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the relevant Work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform such Work.

Pro forma mailings to DBEs requesting bids are not alone sufficient to constitute good faith negotiation.

Developer using good business judgment would consider a number of factors in negotiating with Subcontractors, including DBE Subcontractors, and would take a firm's price and capabilities as well as DBE Goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Developer's failure to meet the DBE Goals, as long as such costs are reasonable. Also, the ability or desire of Developer to perform the Work with its own organization does not relieve Developer of the responsibility to make Good Faith Efforts. However, Developer is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, is subject to Section 14.0 of these DBE Special Provisions.

6. Avoiding rejection of the DBE because its quotation for the relevant Work was not the lowest received. However, nothing in this paragraph shall be construed to require Developer to accept unreasonable quotes in order to satisfy DBE Goals. Developer must submit to ADOT copies of each DBE and non-DBE Subcontractor quote submitted to Developer when a non-DBE Subcontractor was selected over a DBE for a Subcontract. ADOT shall have the right to review whether DBE prices were substantially higher and contact the DBEs listed on a Developer's solicitation to inquire as to whether they were contacted by Developer.
7. Substantiating rejection of DBEs as being unqualified with sound reasons based on a thorough investigation of their capabilities. Developer's or a DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in Developer's efforts to meet the DBE Goals.
8. Making efforts to assist interested DBEs such as formal or informal mentoring, assistance with obtaining bonding, lines of credit, or insurance as required by the Agreement or Developer.
9. Making efforts to assist interested DBEs in obtaining necessary equipment supplies, materials, or related assistance or services.
10. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal

minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

11. Making efforts to identify firms that might potentially be certified as DBEs and assisting those firms with DBE certification and opportunities to submit bids or proposals to participate as Subcontractors, truckers, Suppliers and other service providers on the Project.
12. Making efforts to recruit and utilize non-engineering design and construction related DBE firms such as graphic design and printing, marketing, outreach, training, employment services and catering companies to help meet DBE Goals.

If ADOT determines at any time during the term of the Agreement, at its sole discretion, that Developer's DBE utilization and Good Faith Efforts to meet the DBE goals during performance of the work are not consistent with its commitment to meet DBE Goals or make Good Faith Efforts to meet the DBE Goals as indicated in its Proposal, outlined in its DBE Utilization Plan or monthly reports required pursuant to Section 18.01 of these DBE Special Provisions, ADOT may require that Developer submit, in writing, Good Faith Effort documentation and a corrective action plan to ADOT outlining how it plans to meet DBE Goals. Developer shall have 14 days to submit this information to ADOT. Failure to respond shall result in progress payment being withheld until the requested information is provided to ADOT.

Completion and submission of Good Faith Effort documentation and corrective action plan is not a guarantee that ADOT will approve Good Faith Efforts. ADOT will consider the quality, quantity, and intensity of the different kinds of efforts Developer has made and/or proposes to make. Mere pro forma efforts are not sufficient Good Faith Efforts to meet the DBE Goals and requirements.

## **15.02 Contract Performance**

Developer shall utilize the specific DBEs listed to perform the Work and supply the materials for which each is listed on the Intended Participation Affidavit Summary unless Developer obtains ADOT's written consent. Absent consent from ADOT, Developer shall not be entitled to any payment for work or material that is not performed or supplied by the listed DBE.

Developer shall cause all items of work that Developer has designated for award to DBEs to be performed by the designated DBE or an ADOT-approved DBE substitute. Developer shall notify ADOT in writing if any work assigned or projected to be performed by a DBE will not be performed by the DBE as soon as this information is known. Developer shall make Good Faith Efforts to replace the DBE with another DBE as soon as possible in accordance with Section 15.01 of these DBE Special Provisions.

Developer shall not perform or allow or suffer a non-DBE to perform work items subcontracted to a DBE without prior approval by ADOT. The DBE must perform a Commercially Useful Function (CUF) as more particularly provided in Section 16.05 of these DBE Special Provisions.

Developer is required to use DBEs identified to meet DBE Goals. Developer shall ensure the DBE is available to meet project scheduling, perform work and meet other applicable requirements of the Contract Documents.



ADOT's audit rights under the Agreement include site visits, reviews and records audits to monitor that DBEs are performing a CUF and that Developer is complying with DBE requirements in the Contract Documents and the DBE Utilization Plan. The reviews may include, among other activities, interviews of DBEs and their employees and Developer and its employees. Developer shall inform ADOT in advance when each DBE will be working on the Project, to help facilitate these reviews. Developer shall cooperate during the site visits and reviews. ADOT's staff will make reasonable efforts not to disrupt Work.

## **16.0 CREDITING DBE PARTICIPATION TOWARD MEETING GOAL**

### **16.01 General Requirements**

Only the value of the Work actually performed by the DBE in an area of Work for which it is certified before the Subcontract execution date or, if applicable, Subcontract amendment execution date in each NAICS code applicable to such Work can be credited toward DBE participation. ADOT will give credit toward the DBE Goals only after the DBE has been paid for the Work performed.

ADOT will credit toward the DBE Goals the entire amount of the portion of a Project that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the Work, or equipment leased by the DBE. ADOT will not credit supplies and equipment the DBE Subcontractor purchases or leases from Developer or its Affiliates.

Developer bears the responsibility to determine whether the DBE possesses the proper license(s) to perform the Work and, if DBE credit is requested, that the DBE Subcontractor is certified for the type of Work.

To count toward meeting a DBE Goal, the DBE firm must be certified in each NAICS code applicable to the kind of Work the firm will perform on the Project. NAICS codes for each DBE can be found on the AZUTRACS DBE/SBC Search tab at [adotdbesystem.com](http://adotdbesystem.com). General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

If a DBE cannot complete its Work due to failure to obtain or maintain its licensing, Developer shall notify ADOT and ADOT's BECO immediately after Developer becomes aware of the situation, to request approval to replace the DBE with another DBE. Developer shall follow the DBE Termination/Substitution requirements in Section 19 of these DBE Special Provisions.

ADOT's certification is not a representation of a DBE's qualifications and/or abilities. Developer bears all risks that the DBE may not be able to perform its Work for any reason.

A DBE may participate as a joint venture partner with Developer, a Subcontractor, or a Supplier. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control. When a DBE performs as a joint venture partner, ADOT will credit toward the DBE Goals only that portion of the total dollar value of the Project that is clearly and distinctly performed by the DBE's own forces.

The dollar amount of Work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between the relevant parties.



With the exception of bond premiums, all Work must be attributed to specific bid/work items. Where Work applies to several items, the DBE subcontracting arrangement must specify unit price and amount attributable to each bid/work item. DBE credit for any individual item of Work by the DBE shall be the amount to be paid to the DBE for which it performs a CUF, as more particularly provided in Section 16.05 of these Special Provisions.

Bond premiums may be stated separately, so long as the arrangement between Developer and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific Work done for the Project, supply of equipment specifically for physical work on the Project, or supply of materials to be incorporated into the Project. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), force account and office items.

If a DBE performs part of an item (for example, installation of materials purchased by a Non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's Subcontract price or (2) Developer's cost for the item, less a reasonable deduction for the portion performed by the Non-DBE.

Developer shall receive credit for lower-tier Subcontracts issued to DBEs by non-DBE Subcontractors. Any lower-tier Subcontract to a DBE used to meet the DBE Goals must meet the requirements of the higher-tier DBE Subcontract.

When a DBE subcontracts a part of the Work under its Subcontract to another firm, ADOT will credit the value of such Subcontract toward the DBE Goals only if the DBE's Subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE Goals.

Developer shall receive credit for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

## **16.02 Effect of Loss of DBE Eligibility**

If ADOT deems a DBE ineligible (decertified) or suspended as a DBE in accordance with 49 CFR 26.87 and 26.88, the DBE will not be considered toward meeting the DBE Goals; provided, however, that such firm will be considered toward meeting the DBE Goals if its Subcontract was executed before the DBE suspension or decertification is effective, in which case Developer will continue to receive credit toward the DBE Goals for the firm's work.

## **16.03 DBE Certification Status**

If Developer learns or suspects that a DBE Subcontractor or Supplier has been decertified during the course of its Work, Developer shall contact ADOT BECO to verify the DBE decertification and to ascertain the impact of the decertification on its ability to meet the DBE Goals.

Developer shall regularly check and verify the certification status of Developer's DBE Subcontractors at [www.adot.dbesystem.com](http://www.adot.dbesystem.com).

#### **16.04 Police Officers**

ADOT will not give DBE credit for procuring DPS officers. For Projects on which officers from other agencies are supplied, ADOT will give DBE credit only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

#### **16.05 Commercially Useful Function**

Developer can credit payments to a DBE Subcontractor toward the DBE Goals only if the DBE performs a Commercially Useful Function (CUF) on the Project. A DBE performs a CUF when it is responsible for execution of the Work under its Subcontract and carries out its responsibilities by actually performing, managing, and supervising, the Work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Project, for negotiating price, determining quality and quantity, ordering and installing (where applicable) materials, and paying for the materials itself that it uses on the Project.

To determine where a DBE is performing a commercially useful function, ADOT will evaluate the amount of Work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the Work it is actually performing, the DBE credit claimed for its performance of the Work, and other relevant factors.

A DBE will not be considered to perform a CUF if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, ADOT will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Subcontract with its own work force, or if the DBE subcontracts a greater portion of the work under its Subcontract than would be expected on the basis of normal industry practice for the type of work involved, ADOT will presume that the DBE is not performing a CUF.

Developer shall ensure and confirm that all DBEs selected for Subcontract work on the Project, for which it seeks to claim credit toward the DBE Goals, perform a CUF. Further, Developer shall verify that each DBE fully performs its designated tasks in accordance with the provisions of this section of these DBE Special Provisions. For the purposes of determining a CUF, the DBE's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE firm, and over which the DBE has exclusive use and control, and absolute priority, as evidenced by the leasing agreement from a firm not owned in whole or part by Developer or its Affiliate.

If Developer becomes aware of any change in the nature of a DBE's Work (for example, a DBE Subcontractor issues a second tier Subcontract to a non-DBE), Developer shall promptly report the change to ADOT and BECO.

When a DBE is presumed not to be performing a CUF as provided above, the DBE or Developer may present evidence to rebut this presumption. ADOT will determine if the firm is not performing a CUF given the type of work involved and based on normal industry practices.

Decisions on CUF matters are subject to review by the FHWA, but are not administratively appealable to USDOT. In order to obtain this review, the affected party must contact ADOT in writing to request a review within seven days after ADOT delivers written notice of its decision. The request must be accompanied with any documentation to support the affected party's case. ADOT will transmit the request for review with any supporting documentation to the FHWA.

## **16.06 Trucking**

ADOT will use the following factors in determining whether a DBE trucking company is performing a CUF:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Project, and there cannot be a contrived arrangement for the purpose of meeting the DBE Goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Project on every day that credit is to be given for trucking.
3. Developer will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services that the DBE lessee provides on the Project.

The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Project provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example: DBE Firm X uses two of its own trucks on a Project. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example: DBE Firm X uses two of its own trucks on a Project. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z.

DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks.

Leases for trucks must be long term (extending for a fixed time period of not less than one year and not related to time for Project performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

### **16.07 Materials and Supplies**

If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited.

A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited.

A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or project-by-project basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, ADOT will credit toward DBE Goals the entire amount of the fees or commissions charged by the DBE for assistance in the procurement of the materials and

supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. ADOT will not credit the cost of the materials and supplies themselves toward the DBE Goals.

ADOT will credit expenditures with DBEs for material and supplies (e.g. whether a firm is acting as a regular dealer or a transaction expediter) on a project-by-project basis. The fact that a DBE firm qualifies under a classification (manufacturer, regular dealer or Supplier) for one project does not mean it will qualify for the same classification on another project. Developer shall be responsible for verifying whether a DBE qualifies as a DBE manufacturer, regular dealer or Supplier for the Project. Developer may contact ADOT for assistance in this determination.

## **16.08 Effect of Agreement Changes**

The base figure used to compute the percentage of actual dollars paid to DBEs shall be adjusted in accordance with Section 9.2.8 of the Agreement on account of any Supplemental Agreements or Directive Letters that increase or decrease the Work in which DBE participation has been committed or is intended. Developer shall reflect the revised total dollar values in DBE Monthly Utilization Progress Reports and in the ADOT DBE System as part of Developer payment reporting.

If as a result of a Supplemental Agreement or Directive Letter, the scope or quantity of work being done by a DBE Subcontractor is decreased, Developer shall exercise Good Faith Efforts to obtain additional DBE participation so that the resulting DBE participation will equal or exceed the DBE Goals.

If a Supplemental Agreement or Directive Letter increases the scope or quantity of work being done by a DBE Subcontractor, the DBE shall be given the opportunity to complete the additional work and receive additional compensation beyond its original Subcontract amount.

## **17.0 JOINT CHECKS**

### **17.01 Requirements**

The use of joint checks payable to both a Subcontractor and Supplier is available to all Subcontractors and is not limited to only DBEs. A DBE Subcontractor and a material Supplier (or equipment Supplier) may request permission for the use of joint checks for payments from Developer to the DBE Subcontractor and the Supplier. In order to maintain DBE credit when joint checks are issued, all the conditions in this subsection must be satisfied.

1. The DBE Subcontractor must be independent from Developer and the Supplier, and must perform a CUF. The DBE Subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE Subcontractor may not be utilized as an extra participant in a transaction, contract, or subcontract in order to obtain the appearance of DBE participation.
2. Developer, the DBE Subcontractor, and the material Supplier must establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBEs do not participate.

3. A material or supply contract may not bear an excessive ratio relative to the DBE Subcontractor's normal capacity.
4. There may not be any exclusive arrangement between Developer and the DBE in the use of joint checks that may bring into question whether the DBE is independent of Developer.
5. The arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the Supplier.
6. Developer and the payor of the joint check may not establish or control establishing the terms of the agreement between the DBE Subcontractor and the Supplier.
7. The DBE must have the right and obligation to receive the check from the payor and to deliver the check to the Supplier.
8. Developer cannot require the DBE Subcontractor to use a specific Supplier, and Developer may not participate in the negotiation of unit prices between the DBE Subcontractor and the Supplier.

#### **17.02 Procedure and Compliance**

1. ADOT must approve in writing the agreement for the use of joint checks in writing before any joint checks are issued. Developer shall submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to [contractorcompliance@azdot.gov](mailto:contractorcompliance@azdot.gov).
2. After obtaining authorization for the use of joint checks, Developer, the DBE and the Supplier must retain documentation to allow for efficient monitoring of the joint check agreement.
3. Developer shall submit to [contractorcompliance@azdot.gov](mailto:contractorcompliance@azdot.gov) copies of canceled checks with the payment information for the period in which the joint check was issued or shall make such copies available for review at the time of the onsite CUF review. Developer shall promptly report to ADOT any change from the approved joint check arrangement, and shall require the DBE and Supplier to likewise report to ADOT.

### **18.0 DBE UTILIZATION REPORTING**

#### **18.01 DBE System Payment Reporting**

ADOT is required to collect DBE and non-DBE participation data for all Federal-aid contracts to measure DBE goal attainment and as a mechanism to monitor and track prompt payment to Subcontractors. Developer is notified that such record keeping is also required by ADOT for tracking and reporting DBE participation to USDOT. Accordingly, Developer shall submit monthly reports to ADOT of all payments made to DBE and non-DBE Subcontractors as set forth in Section 13.8.1 of the Agreement

## **18.02 Project Schedule & DBE Utilization Progress Reports**

### **18.02.1 Project Schedule**

Developer shall submit to ADOT a Schedule Narrative with each monthly Project Baseline Schedule Update, as required in Section 13.2.3.2 of the Agreement and Section GP 110.06.2.4 of the Technical Provisions. The Schedule Narrative shall include a log of applicable DBE participation activities in the Project Schedule for which Developer intends to claim credit for attaining the DBE Goals. The log shall include the proposed start/finish dates, durations, and dollar values of the DBE participation activities.

### **18.02.2 DBE Monthly Utilization Progress Reports**

Developer shall submit to ADOT as part of each monthly Draw Request a DBE Monthly Utilization Progress Report for DBE activities completed during the preceding month. Each report shall include:

- Progress on various components of the DBE Utilization Plan;
- Current month and year-to-date summary of DBE Subcontract awards compared to total Subcontract awards;
- Progress toward the DBE Goals;
- Summary of work items not yet completed or subcontracted which are targeted for DBE utilization in the coming month and quarter;
- Bidder's List Forms of firms who quoted or bid on Subcontracts during the previous month (using Bidder's List Form);
- A separate DBE Intended Affidavit Summary for each of (a) Professional Services and (b) Construction for all DBEs authorized under Sections 12.02 and 12.03 of these DBE Special Provisions to work on the Project during the previous month;
- Non-DBE Subcontract awards for Professional Services and Construction Subcontractors, including Small Business Concerns (SBCs);
- Amounts earned by and paid to all Professional Services and Construction DBEs and non-DBEs the previous month (using Monthly Subcontractor Payment Forms);
- Certification of Final DBE Payment, as and when required under Section 18.02.2 of these DBE Special Provisions; and
- Issues encountered and/or resolved pertaining to DBEs working on the Project that could impact Developer's ability to meet the DBE Goals.

During the course of Capital Asset Replacement Work, Developer shall submit to ADOT, as part of each Draw Request to pay for Capital Asset Replacement Work, a DBE Monthly Utilization Progress Report for DBE activities completed on Capital Asset Replacement Work during the preceding month. Each report shall include comparable information and documentation as described above.

Developer must also submit satisfactory evidence in its DBE Monthly Utilization Progress Reports that it is making Good Faith Efforts, as specified in its DBE Utilization Plan, to meet the DBE Goals. If a DBE Goal is not being met or estimated DBE procurements or subcontract targets have not been met for the month, Developer must explain why and how it will remedy the shortfall.

### **18.02.3 Certification of Final DBE Payments**

Developer shall submit to ADOT with its DBE Monthly Utilization Progress Report a DBE Certificate of Final Payments for Construction and Professional Services form for each DBE that completes its Work on the Project during the preceding month. The form shall include the actual dollar amount committed and actually paid to each DBE firm for the accepted creditable work and shall be submitted after all work is completed for the identified DBE, including any outstanding retainage.

The form shall be certified under penalty of perjury, or other applicable legal requirements, to be accurate and complete. ADOT will use this certification and other information available to determine applicable DBE credit allowed to date and the extent to which the DBE firms were fully paid for that Work. Developer shall acknowledge that by the act of filing the forms, the information is supplied to obtain payment regarding the Project under a federal-aid contract.

### **18.02.4 Annual and Final DBE Utilization Reports**

Developer shall prepare and submit to ADOT by each anniversary date of the execution of the Agreement an annual report of progress with DBE utilization. Such report shall cumulatively summarize all of the past months and years' progress reports toward meeting the DBE Goals, as well as addressing Developer's progress or challenges with the implementation of any of the components of its DBE Utilization Plan.

Within 60 days after Substantial Completion, Developer shall prepare and submit to ADOT a Final DBE Utilization Summary Report. The Final DBE Utilization Summary Report must include a summary of Professional Services and Construction DBE utilization, payments to such DBEs, and, separately, payments for all the Design Work and Construction Work. In addition, if the DBE Goal for Professional Services or Construction is not met, the Final DBE Utilization Summary Report must include documentation of Good Faith Efforts taken by Developer prior to and throughout performance of the D&C Work in accordance with 49 CFR Part 26, Appendix A and Section 15.01 of these DBE Special Provisions. A Summary of Final DBE Payments for Professional Services and A Summary of Final DBE Payments for Construction form must be included with the Final DBE Utilization Summary Report, in accordance with Section 20.0 of these DBE Special Provisions.

Within 60 days after completion of any Capital Asset Replacement Work, Developer shall prepare and submit to ADOT a Final DBE Utilization Summary Report. The Final DBE Utilization Summary Report must include a summary of Capital Asset Replacement Work DBE utilization, payments to such DBEs, and payments for all such Capital Asset Replacement Work. In addition, if the DBE Goal for such Capital Asset Replacement Work is not met, the Final DBE Utilization Summary Report must include documentation of Good Faith Efforts taken by Developer prior to and throughout performance of such Capital Asset Replacement Work in accordance with 49 CFR Part 26, Appendix A and Section 15.01 of these DBE Special Provisions. A Summary Certification of Final DBE Payments for such Capital Asset Replacement Work must be included with the Final DBE Utilization Summary Report, in accordance with Section 20.0 of these DBE Special Provisions.

### **18.02.5 Report Review and Sanctions**



As indicated in Section 13.02 of these DBE Special Provisions, ADOT will convene an interdisciplinary Compliance Oversight Committee that will meet with Developer monthly to review and verify information contained in submitted monthly, annual and final reports to monitor and oversee Developer's DBE compliance and progress towards meeting the DBE Goals.

## **19.0 DBE TERMINATION/SUBSTITUTION**

### **19.01 General Requirements**

Developer shall make all reasonable efforts to avoid all reasons to terminate/substitute a Committed DBE listed on the DBE Intended Participation Affidavit Summary. At a minimum, Developer shall negotiate in good faith, make timely payments and/or extend deadlines to the level that it will not jeopardize timely performance of Developer's obligations under the Agreement. Developer shall apply reasonable methods to resolve performance disputes and shall provide documentation to ADOT before attempting to substitute or terminate a Committed DBE. Developer shall cause all Subcontractors who are parties to a Subcontract with a Committed DBE to adhere to the foregoing requirements.

### **19.02 Developer Notice of Termination/Substitution**

Developer shall notify ADOT in writing if any Work assigned to or projected to be performed by a Committed DBE will not be performed by the Committed DBE as soon as this information is known. Developer shall contact ADOT promptly at the first sign of any reason for cause of a Committed DBE termination/substitution.

Developer shall not terminate or permit or suffer termination of a Committed DBE without ADOT's written approval. Developer shall not complete or allow or suffer completion of the Work contracted to the Committed DBE with its own forces or with a non-DBE firm. Before submitting a formal request to ADOT for DBE termination/substitution, Developer shall give, or cause the party to the Subcontract with the Committed DBE to give, a written notice to the Committed DBE Subcontractor with a copy to ADOT of its intent to terminate and/or substitute the Committed DBE and identifying the reason for the action. The notice shall allow the Committed DBE a minimum of five days to respond to the notice advising Developer or the contracting party and ADOT of the Committed DBE's position. ADOT will consider both Developer's request and the DBE firm's response and explanation before approving Developer's termination and substitution request.

### **19.03 Developer Request of Termination/Substitution**

Developer shall formally request the termination and/or substitution of a Committed DBE by submitting to ADOT a written DBE Substitution or Termination Request form and supporting documentation. The submission shall include at the minimum the following information:

1. The date Developer determined the Committed DBE to be unwilling, unable or ineligible to perform;
2. A brief statement of facts describing and citing specific actions or inaction by the Committed DBE giving rise to Developer's assertion that the Committed DBE is unwilling, unable, or ineligible to perform;

3. A brief statement of the Committed DBE's capacity and ability to perform the Work as determined by the subcontracting party;
4. A brief statement of facts regarding actions taken by Developer, that Developer believes constitute Good Faith Efforts toward enabling the Committed DBE to perform;
5. The total dollar amount currently paid for Work performed by the Committed DBE;
6. The total dollar amount remaining to be paid to the Committed DBE for Work completed, but for which the Committed DBE has not received payment, and with which Developer has no dispute;
7. The total dollar amount remaining to be paid to the Committed DBE for Work completed, but for which the Committed DBE has not received payment, and over which Developer has no dispute; and
8. The projected date that Developer will require a substitution or replacement DBE to commence Work, if the request is approved.

ADOT will consider both Developer's request and the Committed DBE's response and explanation. ADOT will grant its written consent for terminating the Subcontract of a Committed DBE only if Developer demonstrates good cause that the DBE is unable, unwilling or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. ADOT shall not be obligated to consent to termination or substitution of a Committed DBE based solely on ability to negotiate a more advantageous Subcontract with another Subcontractor.

#### **19.04 Good Cause**

Good cause to terminate and/or substitute a Committed DBE includes the following in relation to the Committed DBE:

1. Fails or refuses to execute a written Subcontract;
2. Fails or refuses to perform the Work of its Subcontract in a way consistent with normal industry practices and standards; provided, however, that good cause does not exist if the failure or refusal of the Committed DBE to perform such Work results from the bad faith, failure to pay, material breach or discriminatory action of Developer or the subcontracting party;
3. Fails or refuses to meet Developer's reasonable, nondiscriminatory bond requirements;
4. Is the subject of a voluntary or involuntary petition in bankruptcy, becomes insolvent, or exhibits credit unworthiness;
5. Is ineligible to work on public works contracts because of suspension and debarment proceedings pursuant to federal or state law;

6. It is not a responsible Developer;
7. Voluntarily withdraws from the Subcontract and provides to ADOT written notice of its withdrawal;
8. Is ineligible to receive DBE credit for the type of Work required;
9. A DBE owner dies or becomes disabled with the result that is unable to complete its Work on the Subcontract; or
10. Other documented good cause that ADOT determines compels the termination and/or substitution of the Committed DBE.

#### **19.05 Good Faith Effort for DBE Termination/Substitution**

The termination of a DBE with ADOT's approval shall not relieve Developer of its obligations under these Special Provisions. If ADOT approves the termination of a Committed DBE, Developer shall make Good Faith Efforts as identified in Section 13.01 of these DBE Special Provisions and 49 CFR Part 26, Appendix A to find another DBE Subcontractor to substitute for the original DBE. Developer shall direct the Good Faith Efforts, at finding another DBE to perform at least the same amount of Work under as the Committed DBE that was terminated, to the extent needed to meet the DBE Goals. Developer shall provide documentation of such Good Faith Efforts to ADOT within seven days after ADOT delivers a request therefor.

Developer's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that Good Faith Efforts have been made to replace the Committed DBE. The fact that Developer has the ability and/or desire to perform the subject Work with its own forces does not relieve Developer of the obligation to make Good Faith Effort to find the replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

ADOT will not credit the unpaid portion of the terminated Committed DBE's Subcontract toward the DBE Goals. If ADOT has eliminated items of Work subcontracted to a Committed DBE, then Developer shall still make Good Faith Efforts to replace the Committed DBE with another DBE for the extent necessary to meet the DBE Goals. ADOT will review the quality, thoroughness, and intensity of those efforts.

When a DBE substitution is necessary, Developer shall submit a new DBE Intended Participation Affidavit and Intended Participation Affidavit Summary to ADOT for review and comment with the substitute DBE's name, description of work, NAICS code and dollar value of Work. All the provisions of Sections 12.02 and 12.03 of these Special Provisions shall apply with respect to the proposed substitute DBE.

In the event Developer is unable, after substantial Good Faith Efforts, to obtain another certified DBE, ADOT may lower the affected DBE Goal. However, ADOT must approve this in writing prior to a Non-DBE starting the Work that had been subcontracted to the Committed DBE.

#### **20.0 SUMMARY OF CERTIFICATION OF FINAL DBE PAYMENTS**

In anticipation of final payment for Construction Work and subsequently for any instance of Capital Asset Replacement Work, Developer shall submit to ADOT a Summary Certification of

Final DBE Payments. Developer shall submit such Summary for the Professional Services and Construction components of the Work not later than 60 days prior to Substantial Completion. Developer shall submit such Summary for an instance of Capital Asset Replacement Work not later than 60 days prior to its completion. The form shall include a list of all DBEs that worked on the applicable Design Work, Construction Work or Capital Asset Replacement Work, dollar amounts committed, Subcontract amount and total amount paid. Developer shall acknowledge that by the act of filing the forms, the information is supplied to obtain payment regarding the Project as a federal-aid contract.

The Summary Certification of Final DBE Payments shall be submitted with the Final DBE Utilization Summary Report, in accordance with Section 18.02.4 of these DBE Special Provisions. ADOT will use these reports, forms and other documentation to determine if Developer and DBE firms have satisfied the DBE Goals and the extent to which DBE credits were allowed.

## **21.0 SUSPECTED DBE FRAUD**

ADOT will bring to the attention of the USDOT any appearance of false, fraudulent or dishonest conduct in connection with the DBE program and this Agreement, so that USDOT can take steps such as referral to the U.S. Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

**ATTACHMENTS TO EXHIBIT 7**  
**DBE SPECIAL PROVISIONS – FORMS**

<b>Name of Form</b>	<b>Attachment to DBE Special Provisions</b>
Construction DBE Intended Participation Affidavit Summary	Attachment A
Construction DBE Intended Participation Affidavit Individual	Attachment B
Professional Services DBE Intended Participation Affidavit Summary	Attachment C
Professional Services DBE Intended Participation Affidavit Individual	Attachment D
Bidder's List of Subcontractors and Suppliers	Attachment E
DBE Monthly Utilization Progress Report	Attachment F
Monthly DBE Subcontractor Payment Form	Attachment G
Monthly Non-DBE Subcontractor Payment Form	Attachment H
DBE Certificate of Final Payments Construction and Professional Services	Attachment I
Summary of Final Payments for Construction	Attachment J
Summary of Final Payments for Professional Services	Attachment K
DBE Substitution or Termination Request	Attachment L

**ATTACHMENT A**

**CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY**

**[See attached]**



**ATTACHMENT B**

**CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT INDIVIDUAL**

**[See attached]**



**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**Design Build**  
**CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT**  
**(Submit one per DBE)**

To be completed by the DBE firm or supplier

Type of DBE Operation: (Please check one box)

ADOT Project/TRACS # \_\_\_\_\_  
AZ UTRACS Registration # \_\_\_\_\_  
Name of DBE Firm \_\_\_\_\_

- ☐ Trucker  
☐ Broker (Fees/Commission)  
☐ Regular Dealer (60% DBE credit)  
☐ Manufacturer

**Directions:**

The form must be signed by an authorized officer of the DBE firm.

The DBE firm must be certified within the NAICS Code/work category to be performed

This form must be filled out in its entirety. Leave no blank spaces, use N/A or enter "-0" if section does not apply

A separate form must be submitted for each proposed DBE firm (Attached additional sheets as necessary).

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project.

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY UNIT PRICE OR HOURLY RATE (Trucking, Hauling, Uniformed Officers, Etc.)					
NAICS Code	Scope of Work	Applicable Licenses (if any)	Unit/Hourly Estimate	Unit/Hourly Price	Total Minimum Contract Amount
					\$ -
					\$ -
					\$ -
					\$ -
Total					\$ -

**COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY LUMP SUM (Trucking, Hauling, Uniformed Officers, Etc.)**

NAICS Code	Scope of Work	Applicable License (if any)	Total Minimum Contract Amount
			\$ -
			\$ -
			\$ -
			\$ -
Total			\$ -

2. (Trucking) The undersigned affirms that of the trucking/hauling work quoted above, the following applies:

	# of trucks	Dollar Amount
Total DBE-owned	_____	\$ _____
Total DBE leased	_____	\$ _____
Total non-DBE leased w/DBE driver	_____	\$ _____
Total non-DBE leased w/o DBE driver	_____	\$ _____

3. (Brokerage) The undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Unit Price Bid \$ \_\_\_\_\_ Fees/Commissions Portion of Bid \$ \_\_\_\_\_ or \_\_\_\_\_%

4. The undersigned will sublet and/or award \$ \_\_\_\_\_ of work bid to a non-DBE firm.

5. The undersigned will sublet and/or award \$ \_\_\_\_\_ of work to another certified DBE firm.

**Confirmation of Participation**

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the prime contractor receive award of this contract from the Purchaser.

I, \_\_\_\_\_ confirm that \_\_\_\_\_  
(Authorized DBE firm officer, print name and title) (Name of DBE firm)

Will be participating in the above project. The DBE firm will be performing the scope as described above for \_\_\_\_\_  
(total DBE credit dollar amount)

\_\_\_\_\_  
(Authorized DBE firm officer Signature)

\_\_\_\_\_  
(Date)

**ATTACHMENT C**

**PROFESSIONAL SERVICES DBE INTENDED  
PARTICIPATION AFFIDAVIT SUMMARY**

**[See attached]**

**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**Design Build**  
**PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT**  
**SUMMARY**

To be completed by Developer of Consultant

Consultant	Project/Tracs No:
Project Description	

Directions:

This Affidavit must reflect the information included on the individual *Professional Services Affidavit* for each DBE Subconsultant or DBE Tier-Subconsultant submitted during the month.

	Name of DBE Firm	Consultant, Sub, Tier-Sub or Vendor	Type of Services To be Provided	Total \$ Amount Awarded to DBE Firm**	\$ Amount subcontracted to another DBE Firm**	\$ Amount subcontracted to NonDBE Firm**	\$ Amount performed by the DBE Firm	% of work performed by the DBE Firm (CUF)
1.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
2.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
3.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
4.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
5.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
6.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
7.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
8.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
9.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
10.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
11.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
12.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
13.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
14.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
15.				\$0.00	\$0.00	\$0.00	\$0.00	#DIV/01
Total:				\$0.00	\$0.00	\$0.00	\$0.00	
Total \$ Amount toward DBE Goal						\$0		
(1) Total contract/Task Order Amount**								
(2) Total % of DBE Commitment						#DIV/01		
(3) Contract DBE Goal								

Developer/Project Manager \_\_\_\_\_

Signature \_\_\_\_\_

DBE Liaison Officer \_\_\_\_\_

Signature \_\_\_\_\_

BECO Form 206DBM

**ATTACHMENT D**

**PROFESSIONAL SERVICES DBE INTENDED  
PARTICIPATION AFFIDAVIT INDIVIDUAL**

**[See attached]**

**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**Design Build**  
**PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT**  
**INDIVIDUAL**

<b>Developer/Consultant/Subconsultant:</b>	
<b>DBE Subconsultant:</b>	
<b>*DBE Tier-Subconsultant:</b>	
<b>- Subcontracted by:</b>	<b>AZ UTRACS Vendor Registration No.</b>
<b>Project/Tracs No.:</b>	<b>Project Description:</b>

*\*Tier-Subconsultants refer to any subconsultant that is contracted to another subconsultant at any level.*

Directions:

1. This Affidavit must be completed by ALL DBE Subconsultant(s) and DBE Tier-Subconsultant(s) and signed by an officer or principal of the Consultant/Subconsultant.
2. A separate Affidavit must be submitted for EACH proposed Subconsultant DBE firm.
3. List all full and partial services to be provided by the above named DBE Subconsultant.
4. All partial services provided must be fully explained. If not, the DBE will be considered to be responsible for the entire services to be performed. Attached additional sheets as necessary.

Type of Service to be Provided	NAICS Code	BTR License (if applicable)	Total \$ Amount Awarded to DBE Firm**	\$ Amount subcontracted to another DBE firm**	\$ Amount subcontracted to Non DBE Firm**	\$ Amount performed by the DBE firm	% of work performed by the DBE firm (CUF)***
						\$0.00	#DIV/01
Total \$ Amount toward DBE Goal						\$0.00	

\*\* Total Proposed DBE Amount must include the original and any additional amount applied to the Contract or Task Order.

**Substitute Certification:**

***I Certify That:***

1. My firm has made an arrangement/agreement with the above named Consultant/Subconsultant to do work listed above for the proposed Project.
2. My firm agrees to the proposed DBE commitment above and agrees to perform the services in accordance with the DBE provisions of the contract.
3. \*\*\*My firm will complete 100% of the work listed above or intends to subcontract \_\_\_\_% of the work to another DBE firm and/or \_\_\_\_% to another non-DBE firm.

**Name of DBE or non-DBE firm:** \_\_\_\_\_

**Note:** If percentage of work subcontracted out is greater than 70% of the DBE's work amount, the DBE will be deemed to be not performing a commercially useful function and the DBE's participation will NOT be counted toward the DBE Goals.

4. If I subcontract any work to a non-certified DBE firm, I must inform the Consultant because the work will NOT count toward the DBE goal and it will LOWER commitment if a proposed certified DBE is unable or unwilling to perform the work or any part of the intended work.
5. I understand that failure to comply with the information shown on this form will be considered grounds for contract sanctions and other remedies.
6. I declare under penalty of perjury in the second degree, and any other applicable state or federal laws that the statements made on this document are true and complete to the best of my knowledge.

**DBE Owner** \_\_\_\_\_ **Signature** \_\_\_\_\_

**DBE Liaison Officer** \_\_\_\_\_ **Signature** \_\_\_\_\_

**ATTACHMENT E**

**BIDDER'S LIST OF SUBCONTRACTORS AND SUPPLIERS**

**[See attached]**







**ATTACHMENT F**

**DBE MONTHLY UTILIZATION PROGRESS REPORT**

**[See attached]**

**Arizona Department of Transportation**  
**DESIGN BUILD**  
**DBE Monthly Utilization Progress Reports**

(Due by 15<sup>th</sup> day of each month)

• **Contract/Agreement #** \_\_\_\_\_ **Project** \_\_\_\_\_

**Developer** \_\_\_\_\_ **Month** \_\_\_\_\_ **Year** \_\_\_\_\_ **Date Submitted** \_\_\_\_\_

1. **OUTREACH & RECRUITMENT:** Description of DBE and small business bid-specific marketing, recruitment, outreach and community engagement efforts made during the month aimed at professional services and construction firms. Also include description of efforts Developer/Subconsultants/Subcontractors made to recruit and utilize non-engineering design and construction related DBE firms this month.
2. **DBE BUSINESS CAPACITY BUILDING:** Description of DBE capacity-building assistance provided to DBEs this month, such as help with record-keeping and compliance, bonding, financing, access to supplies and other capabilities.
3. **DBE TECHNICAL ASSISTANCE:** Description of specific technical assistance measures that Developer undertook this month to help DBEs and small businesses such as training workshops, technical and financial assistance, support services, mentor/protégé relationships, recruiting and encouraging potential DBEs to get certified, etc.
4. **DBE PROCUREMENTS/AWARDS:** List actual number and total dollar amounts of DBE Subcontracts successfully awarded made during the month.
5. **DISCREPANCIES/GOOD FAITH EFFORTS:** If actual dollar amounts of DBE Subcontracts successfully awarded for the month is less than the month's projected awards, explain why and list Good Faith Efforts that will be made, during what time period, to make up the shortfall amount.
6. **DBE PROCUREMENT PROJECTIONS:** List number, scope of work and total dollar amounts of DBE Subcontracts projected for the coming month and quarter.
7. **PROMPT PAY ISSUES:** Description of any Subcontractor prompt payment issues encountered during the month.
8. **DBE SUBSTITUTION/REPLACEMENT:** Description of any DBE substitution/replacement requests made during the month.
9. **OTHER ISSUES:** Description of any other issues encountered and/or resolved pertaining to DBEs working on the Project that could impact Developer's ability to meet the DBE Goals.
10. **DEVIATIONS/REVISIONS TO DBE UTILIZATION PLAN:** List any deviation from or revisions needed to Developer's approved DBE Utilization Plan.

## 11. PROGRESS TOWARDS MEETING DBE GOALS/COMMITMENTS:

**Total Professional Services Current Monthly DBE Payment Amount** \$\_\_\_\_\_

(from current Month's Professional Services DBE Subconsultant/Subcontractor Payment Form)

**Total Cumulative Professional Services DBE Payment Amount to Date** \$\_\_\_\_\_

(from Previous Months' DBE Professional Services DBE Subconsultant/Subcontractor Payment Forms)

**Total Cumulative Professional Services Payment to Developer** \$\_\_\_\_\_

**Current DBE Professional Services DBE Utilization** \_\_\_\_\_%

\*\*\*\*\*

**Total Construction Current Monthly DBE Payment Amount** \$\_\_\_\_\_

(from current Month's Construction DBE Subconsultant/Subcontractor Payment Form)

**Total Cumulative Construction DBE Payment Amount to Date** \$\_\_\_\_\_

(from Previous Months' DBE Construction DBE Subconsultant/Subcontractor Payment Forms)

**Total Cumulative Construction Payment to Developer** \$\_\_\_\_\_

**Current DBE Construction DBE Utilization** \_\_\_\_\_%

### REQUIRED ATTACHMENTS

- **Professional Services DBE Intended Affidavit Summary Forms** for all Professional Services DBEs submitted and approved by ADOT to work on the Project during the month.
- **Construction DBE Intended Affidavit Summary Forms** for all Construction DBEs submitted and approved by ADOT to work on the Project during the month.
- **Monthly Non-DBE Subcontract Awards Form** one for Professional Services and one for Construction listing all non-DBE Subcontract awards during the current month. Indicate which firms are Small Business Concerns (SBCs).
- **Update Table/Diagram of Anticipated Project DBE Utilization Schedule** that illustrates projected work sequencing of DBE utilization during in each phase/segment for each year of the Project.
- **Monthly DBE Subconsultant/Subcontractor Payment Forms** with amounts earned by and paid to all Professional Services and Construction DBEs during the previous month.
- **Monthly Non-DBE Subconsultant/Subcontractor Payment Forms** with amounts earned by and paid to all Professional Services and Construction non-DBEs during the previous month. Indicate which firms are Small Business Concerns (SBCs)
- **Certification of Final DBE Payment Forms** for all Professional Services and Construction DBEs who completed work and received final payment during the month.
- **Bidder's Lists Forms** of all firms that quoted or bid on Subcontracts during the month.
- **Any other "Good Faith Efforts" documentation**

Developer Project Manager Name \_\_\_\_\_ Developer Project Manager Signature \_\_\_\_\_

Developer DBE Liaison Name \_\_\_\_\_ Developer DBE Liaison Signature \_\_\_\_\_

**ATTACHMENT G**

**MONTHLY DBE SUBCONTRACTOR PAYMENT FORM**

**[See attached]**

**Arizona Department of Transportation**

**DESIGN BUILD**

**Monthly DBE Subcontractor Payment Form**

Developer \_\_\_\_\_ Payment Reporting Period: (From: \_\_\_\_\_ To: \_\_\_\_\_)

ADOT Payment Date: \_\_\_\_\_ Committed DBE Goal: \_\_\_\_\_% Actual DBE % to Date: \_\_\_\_\_%

Developer and all Subcontractors making payments to DBE Subcontractors, regardless of their tier, are required to complete and submit this form to ADOT until all final payments are made. Failure to submit this form, or comply with Arizona's prompt payment law, may cause progress payments to Developer to be withheld. Submit one copy of this form to ADOT with Monthly DBE Utilization Reports by the 15th of each month.

\_\_\_\_\_ PROFESSIONAL SERVICES \_\_\_\_\_ CONSTRUCTION

Name of Subcontractor	Original Subcontract Award Amount	Payment Date	Current Month Payment Amount	Cumulative Payment to Date	Is this a Final Payment?
Monthly Total Payments to DBEs					
Cumulative Total Paid DBEs to Date					

\_\_\_\_\_  
DBE Liaison Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Developer Project Manager Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT H**

**MONTHLY NON-DBE SUBCONTRACTOR PAYMENT FORM**

**[See attached]**

# Arizona Department of Transportation

## DESIGN BUILD

### Monthly Non-DBE Subcontractor Payment Form

Developer \_\_\_\_\_ Payment Reporting Period: (From: \_\_\_\_\_ To: \_\_\_\_\_)

ADOT Payment Date: \_\_\_\_\_ Committed DBE Goal: \_\_\_\_\_% Actual DBE % to Date: \_\_\_\_\_%

Developer and all Subcontractors making payments to Subcontractors, regardless of their tier, are required to complete and submit this form to ADOT until all final payments are made. Failure to submit this form, or comply with Arizona's prompt payment law, may cause progress payments to Developer to be withheld. Submit one copy of this form to ADOT with Monthly DBE Utilization Reports by the 15th of each month. List Small Business Concerns (SBCs) followed by other Subcontractors.

\_\_\_\_PROFESSIONAL SERVICES \_\_\_\_CONSTRUCTION

Name of Subcontractor	Original Subcontract Award Amount	Payment Date	Current Month Payment Amount	Cumulative Payment to Date	SBC? Check if Yes	Is this a Final Payment?
Monthly Total Payments to Non-DBE Subcontractors						
Cumulative Total Paid Non-DBEs Subcontractors to Date						

\_\_\_\_\_  
DBE Liaison Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Developer Project Manager Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT I**

**DBE CERTIFICATE OF FINAL PAYMENTS  
CONSTRUCTION AND PROFESSIONAL SERVICES**

**[See attached]**



**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**DESIGN BUILD**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION OF FINAL PAYMENTS**  
**CONSTRUCTION AND PROFESSIONAL SERVICES**  
*(Submit one form for each DBE involved in the Project)*

**DEVELOPER/SUBCONSULTANT/SUBCONTRACTOR CERTIFICATION**

The undersigned Developer/Subconsultant/Subcontractor for Project # \_\_\_\_\_ hereby certifies that full payment was made, to the firm indicated for material and/or work performed under this agreement as follows:

DBE FIRM AZ UTRACS Vendor Registration # \_\_\_\_\_ ☐ Construction ☐ Professional Services

Name of DBE Firm \_\_\_\_\_ was paid the amount of \$ \_\_\_\_\_.

DBE Work Start Date \_\_\_\_\_ DBE Work End Date: \_\_\_\_\_

This certificate is made under Federal and State Laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from the date of Final Acceptance. In the event the DBE was not paid in accordance with the intended participation affidavits submitted by the Developer/Subconsultant/Subcontractor, all documentation supporting Developer's position as to why the DBE was not fully paid should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

**Check One:** ☐ Developer ☐ Subcontractor/ Subconsultant

**Company Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

---

**DBE FIRM CERTIFICATION**

The undersigned Subcontractor/Subconsultant/Supplier/Manufacturer for the above named project hereby certifies that the payment amount listed above was received and/or justification for lesser payment provided by Developer/Subconsultant/Subcontractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

**Check One:** ☐ Sub/Supplier/Manufacturer ☐ Lower-tier Sub/Supplier/Manufacturer

**DBE Firm Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**ATTACHMENT J**

**SUMMARY OF FINAL PAYMENTS FOR CONSTRUCTION**

**[See attached]**

**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**Design Build**

<b><u>SUMMARY OF FINAL PAYMENTS</u></b> <b><u>CONSTRUCTION</u></b>	
<b>Developer Name:</b>	<b>Project Number:</b>
<b>Name of DBE Liaison:</b>	<b>Date Submitted:</b>

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount <small>*if applicable</small>	Final Amount Paid <small>From Certification of DBE Final Payment Form</small>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

BECCO Form 115DBM

**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**Design Build**

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23.					
24.					
25.					

Developer/Project Manager Signature: \_\_\_\_\_

Date: \_\_\_\_\_

DBE Liaison Officer Signature: \_\_\_\_\_

Date: \_\_\_\_\_

BECO Form 115DBM

**ATTACHMENT K**

**SUMMARY OF FINAL PAYMENTS FOR PROFESSIONAL SERVICES**

**[See attached]**

**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**Design Build**

<b><u>SUMMARY OF FINAL PAYMENTS</u></b> <b><u>PROFESSIONAL SERVICES</u></b>	
Developer Name:	Project Number:
Name of DBE Liaison:	Date Submitted:

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**Design Build**

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23.					
24.					
25.					

Developer/Project Manager Signature: \_\_\_\_\_

Date: \_\_\_\_\_

DBE Liaison Officer Signature: \_\_\_\_\_

Date: \_\_\_\_\_

BECO Form 215DBM

**ATTACHMENT L**

**DBE SUBSTITUTION OR TERMINATION REQUEST**

**[See attached]**





ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
SUBSTITUTION OR TERMINATION REQUEST

☐ PROFESSIONAL SERVICES

☐ CONSTRUCTION

Contract Number (TRACS): \_\_\_\_\_ Developer/Contractor Name: \_\_\_\_\_

Requester Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Type of Request: ☐ Reduction of DB E scope (Attach documentation) ☐ DBE Substitution ☐ DBE Termination

Is this request due to an ADOT change of scope? ☐ Yes (Attach documentation) ☐ No

Name of DBE listed on DBE Affidavits to be ☐ replaced ☐ removed: \_\_\_\_\_

Subcontract Amount: \$ \_\_\_\_\_ Amount of Subcontract Remaining: \$ \_\_\_\_\_

DBE Work Scope of Work Items: \_\_\_\_\_

Indicate the cause for DBE termination/substitution:

- ☐ Fails or refuses to execute written contract
- ☐ Fails or refuses to perform work in accordance with normal industry standards
- ☐ Fails or refuses to meet prime contractor's reasonable, nondiscriminatory bond requirements
- ☐ Becomes bankrupt, insolvent or exhibits credit unworthiness
- ☐ Is ineligible to work because of suspension or debarment proceedings
- ☐ It is not a responsible contractor
- ☐ Voluntarily withdraws from the project and provides to the Department written notice of its withdrawal
- ☐ Is ineligible to receive DBE credit for the type of work required
- ☐ A DBE owner dies or becomes disabled resulting in inability to complete its work on the contract
- ☐ Other documented cause (Attach documentation)

Proposed Replacement DBE Subcontractor Name: \_\_\_\_\_ \*if applicable

Proposed Replacement Subcontract Amount: \$ \_\_\_\_\_

☐ Proposed DBE Subcontractor is not a DBE (Attached Good Faith Effort (GFE) documentation)

NOTE: The original DBE subcontractor has **five working days** to respond to the Developer/Contractor's request and advise the ADOT and the Developer/Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ADOT should not approve the Developer/Contractor's request.

\_\_\_\_\_  
Prime Contractor Signature Date

\_\_\_\_\_  
ADOT Engineer Signature Date

BECO Form DB108C (Rev. 01-31-15)

FOR BECO USE ONLY

Request is: Approved ☐ Not Approved ☐

BECF Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT 8**

### **OJT SPECIAL PROVISIONS**

#### **1.0 Overview**

Training and upgrading of minorities, women, the economically disadvantaged, and veterans toward journeyman status is a primary objective of these OJT Special Provisions. Accordingly, Developer shall make every effort to enroll minority, women, economically disadvantaged, and veteran trainees (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield these trainees) to the extent that such persons are available within a reasonable area of recruitment. Developer is also encouraged to recruit Native American Indian trainees as the Project is located close to Native American lands. Developer shall demonstrate the steps taken in pursuance thereof, which ADOT will consider in determining whether Developer is in compliance with these OJT Special Provisions. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, regardless of whether a member of a minority group, a woman, economically disadvantaged, or a veteran.

The following types of training programs will be recognized:

- Registered apprenticeship and OJT programs registered with the Bureau of Apprenticeship, U.S. Department of Labor or the State;
- ADOT's new FHWA approved OJT program, part of the OJT pilot program;
- A Developer/Subcontractor in-house OJT training program that has been approved by ADOT and FHWA;
- Training programs approved but not necessarily sponsored by the U.S. Department of Labor, Bureau of Apprenticeship and Training provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Specifically, union apprenticeship programs and Associated Builders and Contractor's apprenticeship programs may be used.

Developer shall obtain ADOT's approval or acceptance of a training program prior to commencing work on the classification covered by the program.

The OJT pilot program guidelines are not applicable to this Agreement.

Developer shall provide on-the-job training (OJT) aimed at developing full journeymen in the type of trade or job classification involved. Where feasible, 25 percent of OJT Trainees in each occupation shall be in their first year of apprenticeship or training.

Guidelines and procedures for the OJT program are available online at the BECO website.

#### **2.0 Definitions and Forms**

##### **2.01 Definitions**

“Economically Disadvantaged Person” means a person who:

- Receives, or is a member of a family and/or household, which receives, cash payments under a Federal, State, or local income-based public assistance program;
- Is a member of a family and/or household that receives (or has been determined within the six-month period prior to registration for the program involved to be eligible to receive) food stamps/EBT card under the Food Stamp Act of 1977;
- Was a foster child on behalf of whom State or local government payments were made;
- Does not have a high school diploma or GED; or
- Is from a family whose total annual household income is below the federal poverty limits. See Appendix A of the OJT Guidelines and Procedures document found at <http://azdot.gov/business/business-engagement-and-compliance/on-the-job-training-program/ojt-contract-compliance>.

“**Journey-Level Status**” applies to a person who has completed a registered apprenticeship program or is an experienced worker, not a trainee, and is fully qualified and able to perform all of the duties of a specific trade without supervision.

“**OJT Trainee**” means (a) a minority, female, veteran or economically disadvantaged individual enrolled in any of the programs identified in Section 1.0 and (b) any other individual ADOT approves for enrollment in such an apprenticeship or OJT program and for credit toward the OJT Goals in accordance with Section 9.0.

“**Program Completion**” means the point in time when an OJT Trainee working on the Project has completed at least 2,000 hours in the same work/craft classification, a registered apprenticeship program, or has achieved Journey-Level Status.

## **2.02 List of Forms**

The following forms are referenced in and attached to these OJT Special Provisions. All forms are also available online at <http://azdot.gov/business/business-engagement-and-compliance/on-the-job-training-program/ojt-contract-compliance>.

<b>Name of Form</b>	<b>Attachment to OJT Special Provisions</b>
OJT Trainee Enrollment Form	Attachment A
OJT Trainee Completion/Termination Form	Attachment B
OJT Trainee Status Report Form	Attachment C
OJT Monthly Progress Report	Attachment D
OJT Annual Progress Report	Attachment D
Final OJT Summary Report	Attachment E

### **3.0 Training Goals**

The ADOT OJT participation goals for the Construction Work on the Project (the “OJT Goals”) are:

- Minimum of 142,800 OJT Trainee hours on the Project
- Minimum of 51 OJT Trainees must each complete at least 2,000 hours solely on the Project in the same trade or work classification
- Minimum of ten OJT Trainees must complete hours on the Project necessary to achieve Journey-Level Status (minimum of 2,000 hours must be completed by these OJT Trainees solely on the Project)

Some of the same individual OJT Trainees can be used to satisfy each of the OJT Goals. However, Developer shall make every possible effort to provide additional OJT Trainees with training and shall see that all OJT Trainees are afforded every opportunity to participate in as much training as is practically possible to provide.

Due to turnover and attrition of OJT Trainees in any one OJT Trainee slot, it is expected that continuous OJT Trainee replacements may be necessary during the Construction Work. Developer is encouraged to enroll sufficient numbers of OJT Trainees (well beyond the minimum number of OJT Trainees required to meet the OJT Goals) to help ensure that it will meet the OJT Goals if some OJT Trainees drop out of training. Developer and its Subcontractors must carefully screen, hire and support OJT Trainees that are likely to meet or exceed the 2,000 hours of OJT on the Project, eventually earn Journey-Level Status and be retained as part of its workforce.

The number of OJT Trainees shall be distributed among the work classifications on the basis of Developer's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, Developer shall submit to ADOT for review and comment the number of OJT Trainees to be trained in each selected classification and training program to be used. Work classifications should align with the Project Schedule. Furthermore, Developer shall specify the starting time for training in each of the classifications. Developer will be credited for each OJT Trainee employed to work on the Project that is currently enrolled or becomes enrolled in an approved program identified in Section 1.0.

### **4.0 Subcontractors**

If Developer subcontracts a portion of the Construction Work, it shall determine how many, if any, of the OJT Trainees are to be trained by Subcontractors, provided, however, that Developer shall retain the primary responsibility for meeting or satisfy the requirements for Good Faith Efforts to meet the OJT Goals. Developer shall also insure that these OJT Special Provisions are made applicable to such Subcontract.

### **5.0 OJT Utilization Plan; Training Provisions**

#### **5.01 OJT Utilization Plan**

ADOT will approve Developer's OJT Utilization Plan if it is reasonably calculated to meet the equal employment opportunity obligations of Developer and to qualify the average OJT Trainee for Journey-Level Status in the classification concerned by the end of the training period.

## **5.02 Training Provisions**

Developer's DBE/OJT Outreach and Compliance Manager shall be responsible for monitoring and administering Developer's implementation of the ADOT-approved OJT Utilization Plan and monitoring the OJT Trainees' progress. The DBE/OJT Outreach and Compliance Manager shall serve as the point of contact for ADOT regarding information, reporting, documentation, and conflict resolution relating to the Developer's OJT Utilization Plan implementation.

Developer shall furnish each OJT Trainee a copy of the program he/she will follow in providing the training and shall provide each OJT Trainee with a certification showing the type and length of training satisfactorily completed.

No employee shall be employed as an OJT Trainee in any classification in which such employee has successfully completed a training course and achieved Journey-Level Status or in which such employee has been employed as a journeyman. Developer shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, Developer's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the ADOT-approved OJT Utilization Plan.

It is the intention of these OJT Special Provisions that training is to be provided in the construction crafts rather than clerk typists or secretarial type positions. Training may be permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Acceptance of training in such lower level management positions shall be on a case-by-case basis, and approval shall be obtained from ADOT prior to commencing such work. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration. Some off site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

All training programs shall be administered in a manner consistent with the equal employment obligations of federal-aid highway construction contracts. ADOT reserves the right to request documentation that Developer's training program fulfills these obligations.

It is normally expected that an OJT Trainee will begin his training on the Project as soon as feasible after start of the Construction Work utilizing the skill involved and remain on the Project as long as training opportunities exist in the OJT Trainee's work classification or until the OJT Trainee has completed the training program. However, when such training opportunities involve Work that is suspended or interrupted under the Agreement, Developer may continue training under other ADOT contracts regardless of their funding, except that no reimbursement for such training shall be made on non-federal aid contracts.

It is not required that all OJT Trainees be on board for the entire length of the Construction Work. Developer will have fulfilled its responsibilities under these OJT Special Provisions if and when it has provided acceptable training to meet the OJT Goals.

## **6.0 Trainee Wages**

Developer shall cause all OJT Trainees to be paid at least 60 percent of the minimum journeyman's rate for each classification based on the approved apprenticeship or training program. In that case, the appropriate rates approved by the Department of Labor or Transportation in connection with the existing program will apply to all OJT Trainees being trained for the same classification who are covered by these OJT Special Provisions.

## **7.0 Submittals and Reporting**

Developer shall utilize and cause its Subcontractors to utilize OJT Trainees enrolled in an approved training plan as identified in Section 1.0. All Developer/ Subcontractor OJT Programs used to train OJT Trainees must be submitted to ADOT for approval at least 60 days prior to the program being used to train OJT Trainees on the Project. Developer/ Subcontractor OJT Programs not receiving prior ADOT approval shall cause Developer to be denied OJT Training credit for OJT Trainees enrolled in the unapproved program.

During the course of Construction Work, Developer shall submit the following forms and reports to ADOT:

- An OJT Trainee Enrollment Form for each proposed OJT Trainee hired for the Project throughout the course of Construction Work as each individual is hired. Developer shall submit to ADOT such forms at the times specified in Section 9.3.4 of the Agreement.
- An OJT Trainee Completion/Termination Form when an OJT Trainee completes 2000 or more hours in the same construction trade or job classification, achieves Journey-Level Status or terminates employment with Developer or one of its Subcontractors working on the Project. Developer shall submit to ADOT such forms by the 15<sup>th</sup> of every month with the OJT Monthly Progress Report.
- OJT Trainee Status Report form outlining monthly status of each OJT Trainee currently working on Project. Developer shall submit to ADOT such form by the 15<sup>th</sup> of every month with the OJT Monthly Progress Report.
- OJT Monthly Progress Report form, which Developer shall submit to ADOT by the 15th day following each month from and after the month in which Construction Work commences. The OJT Monthly Progress Report shall include the OJT Program Trainee Enrollment form for each OJT Trainee enrolled during the previous month, the OJT Trainee Completion/Termination form for OJT Trainees completing required number of hours or terminating from the program during the month, the OJT Trainee Status Report form outlining current status of each OJT Trainee, an updated OJT Schedule for the upcoming quarter and projected through Substantial Completion, progress being made on the OJT Utilization Plan and any Good Faith Effort documentation to meet the OJT Goals.
- An OJT Annual Progress Report form, which Developer shall submit to ADOT within 15 days after each anniversary of the month in which Construction Work commences. The OJT Annual Progress Report shall report on the training of OJT Trainees completed in the previous 12 months and shall include cumulative information submitted in the OJT Monthly Progress Reports submitted during the previous 12 months.
- Final OJT Summary Report prior to Final Acceptance. The final report shall include training hours and OJT program completion data for all OJT Trainees that worked on the Project. The report shall also provide an accurate account of total OJT Trainee hours and identification of each OJT Trainee by name, ethnicity, gender, veteran or disadvantaged.

Additionally, Developer must indicate the status of all OJT Trainees that worked on the Project by indicating if the OJT Trainee completed 2,000 or more hours, graduated to journeyman status or terminated from the OJT program. The Final OJT Summary Report shall also contain Good Faith Effort documentation if Developer fails to meet any of the OJT Goals. Developer may submit the Final OJT Summary Report in a format of Developer's choosing, provided that all the requested information is included.

Prior to commencement of any Construction Work, Developer shall submit to ADOT an OJT Schedule which will indicate each OJT Trainee's name, sex, race/ethnicity, the approved training program in which the OJT Trainee is enrolled, the approximate number of hours each OJT Trainee will be trained, the crafts to which the OJT Trainees belong and the estimated period of time that they will be employed as OJT Trainees.

Developer shall submit to ADOT monthly, as part of its Draw Request, a supplemental or revised OJT Schedule updated with all required information regarding any new OJT Trainee.

Developer shall enter OJT Trainee hours worked on a weekly basis into ADOT's web-based Labor Compliance System, LCPTracker. If OJT Trainee hours are not entered into LCPTracker by the 15th of each month for the preceding month, then they will be considered delinquent.

Developer shall provide for the maintenance of records and furnish periodic reports documenting its performance under these OJT Special Provisions. Developer shall also retain the training records for all OJT Trainees for a period of five years following Substantial Completion of the Project. Such records shall be available for inspection or review by ADOT and the Federal Highway Administration.

## **8.0 Compliance and Oversight Committee**

ADOT will convene an interdisciplinary Compliance Oversight Committee to monitor and oversee OJT compliance and progress towards meeting the OJT Goals. The Compliance Oversight Committee will include representatives of ADOT's General Engineering Consultant (GEC) for the Project, FHWA, ADOT's Business Engagement & Compliance Office and other entities. Developer's DBE/OJT Outreach and Compliance Manager and Project Manager (or designee responsible for the project management of Professional Services and construction activities of the Project) shall meet with the Compliance Oversight Committee on a monthly basis. The purpose of the monthly meetings will be to review information in submitted OJT Monthly Progress Reports, and to monitor whether the utilization of OJT Trainees is consistent with the OJT Goal commitment and approved OJT Utilization Plan. The Compliance Oversight Committee will also review OJT Trainee status from the previous month, review projected OJT recruitment and hiring for upcoming months, review Developer's Good Faith Efforts to meet the OJT Goals, identify and resolve impediments to successful OJT Trainee participation, and proactively work to resolve any OJT compliance issues that may arise.

## **9.0 Continuing Good Faith Efforts**

Developer shall be obligated to provide additional information and documentation that demonstrates its continued Good Faith Efforts from the Effective Date through Final Acceptance to meet the OJT Goals. Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, proactive and continuous result-oriented recruitment, training and retention measures in accordance with (23 CFR 230.409(g)(4)). Good Faith Efforts shall be taken as hiring opportunities arise. Whenever Developer requests ADOT approval of someone

other than a minority, woman, economically disadvantaged individual, and veteran for credit towards its OJT Goals, the Developer shall submit documented evidence of its Good Faith Efforts to fill that position with a minority, woman, economically disadvantaged individual, and veteran.

ADOT shall conduct periodic site visits to Developer's worksite to review OJT compliance, as part of a FHWA required contractor compliance program review process. Developer's DBE/OJT Outreach and Compliance Manager must be available to meet with ADOT staff as well as be available to respond to periodic emails and phone calls from ADOT to check on the progress of OJT Trainees. ADOT will make reasonable efforts to minimize disruption to Developer's work.

If ADOT determines at any time during the Construction Work that Developer's OJT participation and Good Faith Efforts to meet the OJT Goals during performance of the Construction Work are not consistent with its commitment to meet the OJT Goals or make Good Faith Efforts to meet the OJT Goals or with the provisions of the approved OJT Utilization Plan, ADOT shall have the right to enforce remedies as provided in Sections 19.6 and 20.5 of the Agreement.

Completion and submission of Good Faith Effort documentation and, if required, a corrective action plan is not a guarantee that ADOT will approve Good Faith Efforts. ADOT will consider the quality, quantity, and intensity of the different kinds of efforts Developer has made and/or proposes to make, whether any failure is due to circumstance beyond the control of Developer, and any other extenuating circumstances. The efforts employed by Developer should be those that one could reasonably expect Developer to make if Developer were actively trying to obtain OJT participation sufficient to meet the OJT Goals. Mere pro forma efforts are not sufficient Good Faith Efforts to meet the OJT Goals and requirements.



## Attachment A

### OJT TRAINEE ENROLLMENT FORM

<b>TRAINEE INFORMATION</b> (Please print clearly) First Name:		Middle:		Last Name:	
Street Address:				City, ST Zip:	
Mailing Address:				City, ST Zip:	
Home Phone:				Cell Phone:	
E-mail Address:				Gender:	<input type="checkbox"/> Male <input type="checkbox"/> Female
Ethnicity:	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Hispanic <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Other _____				
	Disadvantaged: <input type="checkbox"/> Yes <input type="checkbox"/> No				
	Are you 18 years of age or older? <input type="checkbox"/> Yes <input type="checkbox"/> No				
	Have you ever served In the military? <input type="checkbox"/> Yes <input type="checkbox"/> No				
High school Diploma or equivalent (GED) <input type="checkbox"/> Yes <input type="checkbox"/> No					
<b>WERE YOU PREVIOUSLY ENROLLED IN AN OJT HIGHWAY CONSTRUCTION PROGRAM</b>					
If YES: Name of Program? _____ Classification? _____					
Level Attained: _____ Number of training hours completed? _____					
<b>CURRENT PROJECT'S OJT PROGRAM</b>					
Name of Program? _____ Classification? _____					
Level Enrolled: _____ Number of training hours Expected? _____					
<b>APPLICANT STATEMENT</b>					
I CERTIFY THAT THE ANSWERS ON THIS APPLICATION ARE TRUE AND COMPLETE TO MY KNOWLEDGE.					
SIGNATURE		PRINTED NAME		DATE	



☐ OJT Completion

☐ OJT Termination

**Attachment B**

**OJT TRAINEE COMPLETION/TERMINATION FORM**

<b>1. Developer / Subcontractor's Name:</b> _____		
<b>2. Street Address:</b> _____ City: _____ State: _____ ZIP: _____		
<b>3. Name of Trainee:</b> _____	<b>4. Address:</b> _____ City: _____ State: _____ ZIP: _____	
<b>5. Date Hired:</b> ____/____/____	<b>6. Date Training Program Started:</b> ____/____/____	<b>7. Date Completed / Terminated:</b> ____/____/____
<b>8. Job Classification: (Trade)</b> <input type="checkbox"/> Labor <input type="checkbox"/> Carpenter <input type="checkbox"/> Cement Mason <input type="checkbox"/> Equipment Operator <input type="checkbox"/> Mechanic/Equipment Service Technician <input type="checkbox"/> Quality Control (QC) <input type="checkbox"/> Engineer in Training (EIT) <input type="checkbox"/> Other		
<b>9. Type of Training Program:</b> <input type="checkbox"/> Registered Apprenticeship Program <input type="checkbox"/> Contractor OJT Program		
<b>10. Completed/Terminated:</b> <input type="checkbox"/> Completed <input type="checkbox"/> Terminated <input type="checkbox"/> Reduction In Force <input type="checkbox"/> Quit <input type="checkbox"/> Lay Off Date: ____/____/____ Total # of Hours Completed _____		
<b>11. Reason for Termination:</b> _____ _____		
<b>12. SUBMITTED BY:</b> (Signature and Title of Contractor's DBE/OJT Outreach and Compliance Manager) _____ Date: ____/____/____		
<b><u>THIS AREA FOR ADOT BECO USE ONLY</u></b>		
<b>ADOT BECO OFFICE APPROVAL:</b> _____ <b>DATE:</b> _____ <b>TITLE:</b> _____		
<b>COMPLETION CERTIFICATE SENT TO CONTRACTOR ON DATE:</b> _____		

**Attachment C**  
**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**DESIGN BUILD**

**MONTHLY/ANNUAL OJT TRAINEE STATUS REPORT FORM**

(Due by the 15<sup>th</sup> of each month and annually on anniversary of Agreement execution date)

Developer/Subcontractor:	
Project #:	
Reporting Period:	Month/Year _____ Annual _____
Contract Description:	

Trainee Name	Training Classification/ Craft	Gender	Ethnicity	Veteran or Disadvantaged	Start Date	End Date	Status (Completed, Continuing or Terminated)	Total Hours Completed

<b>Total OJT Trainees Completed Training During Month/Year</b>	
<b>Total OJT Trainees Terminated During Month/Year</b>	
<b>Total OJT Trainees Continuing Training During Month/Year</b>	

Developer DBE/OJT Outreach and Compliance Manager

Name\_\_\_\_\_

Signature\_\_\_\_\_ Date\_\_\_\_\_

Developer Project Manager

Name\_\_\_\_\_

Signature\_\_\_\_\_ Date\_\_\_\_\_

**Attachment D**  
**Arizona Department of Transportation**  
**DESIGN BUILD**  
**OJT Monthly/Annual Progress Report**

(Due by the 15<sup>th</sup> of each month and annually within 15 days after  
each anniversary of the month in which Construction Work commences)

Contract/Agreement:\_\_\_\_\_ Project\_\_\_\_\_

Developer/Contractor\_\_\_\_\_ Reporting Period\_\_\_\_\_

**1. PROGRESS TOWARDS MEETING OJT GOALS:**

		Current Month					
	Project Total To-Date	Current Month Totals	Women	Minorities	Veterans	Disadvantaged	Other
Total Number of OJT Trainees Enrolled:							
Total Number of OJT Trainee Hours:							
Total Number of OJT Trainees with 2,000 or More Hours:							
Total Number of OJT Trainees Achieved Journey-Level Status:							

2. **OUTREACH & RECRUITMENT:** Description of types of proactive OJT marketing, recruitment, outreach and community engagement efforts made by Developer during the month to secure women, minority, veteran and disadvantaged trainees for the Project.

3. **TRAINING PROGRAMS:** Contractor Training Programs submitted for approval during the month.

4. **DEVIATIONS/REVISIONS TO OJT UTILIZATION PLAN:** List any deviation from or revisions needed to Developer's approved OJT Utilization Plan.

5. **OTHER ISSUES:** Description of any other issues encountered and/or resolved pertaining to OJT Trainees working on the Project that could impact Developer's ability to meet the OJT Goals.

**REQUIRED ATTACHMENTS**

- **OJT Enrollment Forms** for each OJT Trainee hired during the month.
- **OJT Completion/Termination Forms** for each OJT Trainee that completed 2,000 or more hours, Journey-Level Status or terminated from the Project.
- **OJT Monthly OJT Trainee Status Report Form** summarizing the training status of all OJT Trainees working on the Project.
- **Updated OJT Schedule** from the upcoming quarter and projected through Substantial Completion of the Project.

- **Any Good Faith Efforts** documentation if not on target to meet the OJT Goals.

## Attachment E

Arizona Department of Transportation

DESIGN BUILD

### Final OJT Summary Report

(Due 60 days prior to Substantial Completion)

Contract/Agreement\_\_\_\_\_ Project\_\_\_\_\_

Developer/Contractor\_\_\_\_\_ Construction Start and End Dates\_\_\_\_\_

#### 6. FINAL PROGRESS TOWARDS MEETING OJT GOALS:

	Final Project Totals	Women	Minorities	Veterans	Disadvantaged	Other
Total Number of OJT Trainees Enrolled:						
Total Number of OJT Trainee Hours*:						
Total Number of OJT Trainees with 2,000 or More Hours:						
Total Number of OJT Trainees Achieved Journey-Level Status:						

\*Must match payroll hours uploaded into LCPtracker

7. **OUTREACH & RECRUITMENT:** Describe all types of proactive OJT marketing, recruitment, outreach and community engagement efforts made by Developer during the course of Construction Period to secure women, minority, veteran and disadvantaged trainees for the Project.

8. **DEVIATIONS/REVISIONS TO OJT UTILIZATION PLAN:** List any deviation or revisions Developer had to make to its approved OJT Utilization Plan throughout the course of the Construction Period.

9. **OTHER ISSUES:** Description of any other issues encountered and/or resolved pertaining to OJT Trainees working on the Project that impacted Developer's ability to meet the OJT Goals.

#### REQUIRED ATTACHMENTS

- **OJT Completion/Termination Forms** for each OJT Trainee that completed 2,000 or more hours or achieved Journey-Level Status for which Developer is requesting OJT credit.
- **Annual OJT Trainee Status Report Form** summarizing the training status of all OJT Trainees that worked on the Project.
- **Any Good Faith Efforts** explanation and documentation, if Developer did not meet OJT Goals.

## **EXHIBIT 9**

### **KEY SUBCONTRACTORS AND KEY PERSONNEL**

Exhibit 9-1	Key Subcontractors
Exhibit 9-2	Key Personnel



**EXHIBIT 9-1**

**KEY SUBCONTRACTORS**

<b>Firm</b>	<b>Capacity</b>
Parsons Brinckerhoff, Inc.	Lead Engineering Firm
Raba Kistner, Inc.	Independent Quality Firm
202 Maintenance Services, LLC	Lead Maintenance Firm
DBi Services, LLC	Member of Lead Maintenance Firm

**EXHIBIT 9-2**  
**KEY PERSONNEL**

<b>Key Personnel Position</b>	<b>Individual's Name</b>
Project Manager	Walter Lewis
Construction Manager	Ron Dukeshier
Design Manager	Doug LaMont
Quality Manager	Sheldrick Penton
Safety Manager	Jeff Charboneau
Public Relations Officer	Sue Lewin
ROW Acquisition Manager	Todd Belzner
Utility Adjustment Coordinator	Larry Westhouse
Environmental Compliance Manger	Michael Shirley
Maintenance Manager	Lee Pauls
DBE/OJT Outreach and Compliance Manager	Melissa Abraham

## **EXHIBIT 10**

### **FORMS OF MAINTENANCE PERFORMANCE AND PAYMENT BONDS**

Exhibit 10-1	Form of Maintenance Performance Bond <sup>1</sup>
Exhibit 10-2	Form of Maintenance Payment Bond <sup>1</sup>
Exhibit 10-3	Form of Multiple Obligee Rider for Maintenance Performance Bond
Exhibit 10-4	Form of Multiple Obligee Rider for Maintenance Payment Bond

<sup>1</sup> If the bond is to secure the performance or payment obligations of Lead Maintenance Firm rather than Developer, then:

- (a) the form of bond shall be revised to reflect Lead Maintenance Firm as the “Principal” or “Contractor”, Developer in place of ADOT as the bond obligee, and the Subcontract between Developer and the Lead Maintenance Firm in respect of the Project as the “Agreement” and the “Contract Documents”;
- (b) the form of payment bond set forth as Exhibit 10-2 shall be revised to reflect that it inures to the benefit of all persons supplying labor or materials to the Lead Maintenance Firm or the Lead Maintenance Firm’s Subcontractors; and
- (c) the multiple obligee riders in the forms set forth as Exhibit 10-3 and Exhibit 10-4, as applicable, must be provided that identify ADOT as the “Ultimate Obligee.”

Further, if there is more than one Lead Maintenance Firm, or if Developer has a direct Subcontract for any portion of the Maintenance Services with a Subcontractor in addition to the Lead Maintenance Firm, and Developer is not the Principal under the bonds, then Developer shall provide bonds from each such Lead Maintenance Firm and each such Subcontractor, as provided in Section 10.2.6 of the Agreement.

## EXHIBIT 10-1

### FORM OF MAINTENANCE PERFORMANCE BOND

#### Loop 202 South Mountain Freeway Project

Bond No. \_\_\_\_\_

Effective Date of Bond: \_\_\_\_\_

WHEREAS, the Arizona Department of Transportation ("Obligee"), has awarded to Connect 202 Partners, LLC, a Delaware limited liability company ("Principal"), a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project, duly executed and delivered as of February 26, 2016 (the "Agreement"), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations related to the Maintenance Services under the Contract Documents.

NOW, THEREFORE, Principal and \_\_\_\_\_, ("Surety"), holder of a certificate of authority to transact surety business in the State of Arizona, are held and firmly bound unto Obligee in the amount of \$[\_\_\_\_\_] [***amount calculated as set forth in Section 10.2.1 of the Agreement***] (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform and fulfill all of its undertakings, covenants, terms, conditions, agreements and obligations under the Contract Documents, including any and all alterations, modifications, amendments and supplements thereto, relating to the Maintenance Services and arising during the term of this Bond set forth in Paragraph 8 of this Bond, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Agreement.

2. This Bond specifically guarantees the performance of each and every undertaking, covenant, term, condition, agreement and obligation of Principal under the Contract Documents, including any and all alterations, modifications, amendments and supplements thereto, relating to the Maintenance Services and arising during the term of this Bond set forth in Paragraph 8 of this Bond, including but not limited to its liability for payment in full of all Liquidated Damages, Noncompliance

Charges and Lane Rental Charges as specified in the Contract Documents that accrue during such term (collectively the "Bonded Obligations"), but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive the expiration or termination of the Maintenance Period (if occurring during the term of this Bond) with respect to the Bonded Obligations that survive such expiration or termination.

4. Whenever Principal shall be, and is declared by Obligor to be, in default under the Contract Documents with respect to any of the Bonded Obligations, provided that Obligor is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform its Bonded Obligations in accordance with the terms and conditions of the Contract Documents then in effect; or

b. perform the Bonded Obligations of the Principal in accordance with the terms and conditions of the Contract Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligor for a contract for performance and completion of the Bonded Obligations, through a procurement process approved by the Obligor, arrange for a contract to be prepared for execution by the Obligor and the contractor selected with the Obligor's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract Documents, and pay to the Obligor the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Maintenance Price for the term of this Bond set forth in Paragraph 8 incurred by the Obligor resulting from the Principal's default, but not to exceed the Bonded Sum; or

d. deliver to Obligor written notice waiving Surety's right to perform the Bonded Obligations of the Principal, to arrange for performance, and to obtain a new contractor, and either, (i) agreeing to pay the amount for which Surety may be liable to the Obligor as soon as practicable after the amount is determined by agreement or otherwise, with interest thereon as provided by law, or (ii) denying liability in whole or in part and explaining all reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond ten days after receipt of an additional written notice from the Obligor to Surety demanding that Surety perform its obligations under this Bond, and the Obligor shall be entitled to enforce any remedy available to the Obligor. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and Surety fails to promptly make payment of the full amount due or Surety has denied liability, in whole or in part, then Obligor shall be entitled to enforce any remedy available to the Obligor without further notice.

6. If Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligor shall not be greater than those of the

Principal under the Contract Documents with respect to the Bonded Obligations, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract Documents with respect to the Bonded Obligations. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Maintenance Price for the term of this Bond set forth in Paragraph 8 below to mitigation costs and damages on the Agreement, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective Maintenance Services and completion of the Maintenance Services required during such term in accordance with the terms and conditions of the Contract Documents;

b. actual damages, including additional legal, design, engineering, professional and delay costs, to the extent available at law, resulting from Principal's default with respect to any of the Bonded Obligations, or resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. all Liquidated Damages, Noncompliance Charges and Lane Rental Charges as specified in the Contract Documents that accrue during such term.

7. No alteration, modification, amendment or supplement to the Contract Documents or the nature of the Maintenance Services to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, amendment, supplement or extension of time.

8. The term of this Bond commences on the Effective Date set forth above. In no event shall the term of this Bond be beyond the [ ] ***[term of the bond may not be less than 5 years, except where a shorter time period is sufficient to bond until the end of the Term]*** anniversary of the Effective Date without the express written consent of the Surety; provided that the end of the term of this Bond shall not exonerate Surety from its obligations with respect to any failure of the Principal to perform in accordance with the Contract Documents during the term of this Bond, and this Bond shall be released only upon the satisfaction of the conditions to release set forth in Section 10.2.1.7 of the Agreement. Surety will have no obligation to extend or replace this Bond for additional periods of time. Failure of the Surety to extend this Bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

9. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. No right of action shall accrue on this Bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 20[\_\_\_]

Principal:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

\_\_\_\_\_  
or secretary attest

By: \_\_\_\_\_  
Name  
Title:  
Address:

**EXHIBIT 10-2**

**FORM OF MAINTENANCE PAYMENT BOND**

**Loop 202 South Mountain Freeway Project**

Bond No. \_\_\_\_\_

Effective Date of Bond: \_\_\_\_\_

WHEREAS, the Arizona Department of Transportation ("Obligee"), has awarded to Connect 202 Partners, LLC, a Delaware limited liability company ("Principal"), a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project, duly executed and delivered as of February 26, 2016 (the "Agreement"), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims in relation to the Maintenance Services.

NOW, THEREFORE, Principal and \_\_\_\_\_, ("Surety"), holder of a certificate of authority to transact surety business in the State of Arizona, are held and firmly bound unto Obligee in the amount of \$[\_\_\_\_\_] ***[amount calculated as set forth in Section 10.2.2 of the Agreement]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any monies due to any person or entity supplying labor or materials to Principal, the Lead Maintenance Firm or the Lead Maintenance Firm's subcontractors during the term of this Bond set forth in Paragraph 5 of this Bond, then Surety shall pay for the same in an amount in the aggregate not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 10.2.2.2 of the Agreement.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Agreement.

2. No alteration, modification, amendment or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety waives notice of any alteration, modification, amendment, supplement or extension of time.



3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. This Bond shall inure to the benefit of all persons and entities supplying labor or materials to Principal, the Lead Maintenance Firm or the Lead Maintenance Firm's subcontractors during the term of this Bond set forth in Paragraph 5 of this Bond so as to give a right of action to such persons and entities and their assigns in any suit brought upon this Bond.

5. The term of this Bond commences on the Effective Date set forth above. In no event shall the term of this Bond be beyond the [\_\_\_\_] ***[term of the Bond may not be less than 5 years, except where a shorter time period is sufficient to bond until the end of the Term.]*** anniversary of the Effective Date without the express written consent of the Surety; provided that the end of the term of this Bond shall not exonerate Surety from its payment obligations with respect to any failure of the Principal to pay sums accruing or owing to persons or entities supplying labor or materials during the term of this Bond, and this Bond shall be released only upon satisfaction of the conditions to release set forth in Section 10.2.2.2 of the Agreement. Surety will have no obligation to extend or replace this Bond for additional periods of time. Failure of the Surety to extend this Bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 20[\_\_\_\_].

Principal:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

**SURETY**

By: \_\_\_\_\_  
Name  
Title:  
Address:

**EXHIBIT 10-3**

**FORM OF MULTIPLE OBLIGEE RIDER FOR  
MAINTENANCE PERFORMANCE BOND**

**Loop 202 South Mountain Freeway Project**

This Rider is executed concurrently with and shall be attached to and form a part of Maintenance Performance Bond No. \_\_\_\_\_ (the "Maintenance Performance Bond").

WHEREAS, the Arizona Department of Transportation ("ADOT") awarded to Connect 202 Partners, LLC, a Delaware limited liability company ("Primary Oblige", a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project (the "Project"), duly executed and delivered as of February 26, 2016, on the terms and conditions set forth therein; and

WHEREAS, on or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Principal entered into a written agreement bearing the date of \_\_\_\_\_, 20\_\_ (the "Agreement") with Primary Oblige for Principal's performance of the Maintenance Services for the Project; and

WHEREAS, Primary Oblige requires that Principal provide the Maintenance Performance Bond and that ADOT be named as an additional obligee under the Maintenance Performance Bond; and

WHEREAS, Principal and Surety have agreed to execute and deliver this Rider concurrently with the execution of the Maintenance Performance Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: ADOT is hereby added to the Maintenance Performance Bond as a named obligee (the "Ultimate Oblige").

Surety shall not be liable under the Maintenance Performance Bond to Primary Oblige, Ultimate Oblige, or either of them, unless Primary Oblige, Ultimate Oblige, or either of them, shall make payments to Principal (or in the case Surety arranges for performance of the Maintenance Services, to Surety) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by Primary Oblige shall have occurred and be continuing under the Agreement.

The aggregate liability of Surety under the Maintenance Performance Bond to Primary Oblige and Ultimate Oblige is limited to the penal sum of the Maintenance Performance Bond. Ultimate Oblige's rights hereunder are subject to the same

defenses, except defenses available under bankruptcy law, that Principal and/or Surety have against Primary Obligee, provided that Ultimate Obligee has received notice and 60 days prior opportunity to cure breach or default by Primary Obligee under the Agreement. The total liability of Surety shall in no event exceed the amount recoverable from Principal by Primary Obligee under the Agreement.

The rights of Primary Obligee under the Maintenance Performance Bond are subordinate in all respects to Ultimate Obligee's rights hereunder. Primary Obligee shall have no right to receive any payments under the Maintenance Performance Bond and the Surety shall make any and all payments under the Maintenance Performance Bond to Ultimate Obligee.

In the event of a conflict between the Maintenance Performance Bond and this Rider, this Rider shall govern and control. All references to the Maintenance Performance Bond, either in the Maintenance Performance Bond or in this Rider, shall include and refer to the Maintenance Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Maintenance Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal:

202 Maintenance Services, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

Surety:

\_\_\_\_\_  
  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

**EXHIBIT 10-4**

**FORM OF MULTIPLE OBLIGEE RIDER FOR  
MAINTENANCE PAYMENT BOND**

**Loop 202 South Mountain Freeway Project**

This Rider is executed concurrently with and shall be attached to and form a part of Maintenance Payment Bond No. \_\_\_\_\_ (the "Maintenance Payment Bond").

WHEREAS, the Arizona Department of Transportation ("ADOT") awarded to Connect 202 Partners, LLC, a Delaware limited liability company ("Primary Oblige", a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project (the "Project"), duly executed and delivered as of February 26, 2016, on the terms and conditions set forth therein; and

WHEREAS, on or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, Principal entered into a written agreement bearing the date of \_\_\_\_\_, 20\_\_ (the "Agreement") with Primary Oblige for Principal's performance of the Maintenance Services for the Project; and

WHEREAS, Primary Oblige requires that Principal provide the Maintenance Payment Bond and that ADOT be named as an additional obligee under the Maintenance Payment Bond; and

WHEREAS, Principal and Surety have agreed to execute and deliver this Rider concurrently with the execution of the Maintenance Payment Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: ADOT is hereby added to the Maintenance Payment Bond as a named obligee (the "Ultimate Oblige").

Surety shall not be liable under the Maintenance Payment Bond to Primary Oblige, Ultimate Oblige, or either of them, unless Primary Oblige, Ultimate Oblige, or either of them, shall make payments to Principal (or in the case Surety arranges for performance of the Maintenance Services, to Surety) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by Primary Oblige shall have occurred and be continuing under the Agreement.

The aggregate liability of Surety under this Maintenance Payment Bond to Primary Oblige and Ultimate Oblige is limited to the penal sum of the Maintenance Payment Bond. Ultimate Oblige's rights hereunder are subject to the same defenses, except defenses available under bankruptcy law, that Principal and/or Surety have against Primary Oblige, provided that Ultimate Oblige has received notice and 60 days prior opportunity to cure breach or default by Primary Oblige under the Agreement. The

total liability of Surety shall in no event exceed the amount recoverable from Principal by Primary Obligee under the Agreement.

The rights of Primary Obligee under the Maintenance Payment Bond are subordinate to Ultimate Obligee's rights hereunder. Primary Obligee shall have no right to receive any payments under the Maintenance Payment Bond and Surety shall make any and all payments under the Maintenance Payment Bond to Ultimate Obligee.

In the event of a conflict between the Maintenance Payment Bond and this Rider, this Rider shall govern and control. All references to the Maintenance Payment Bond, either in the Maintenance Payment Bond or in this Rider, shall include and refer to the Maintenance Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Maintenance Payment Bond shall be and remains in full force and effect.

Signed, sealed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal:

202 Maintenance Services, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

(Seal)

Surety:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

(Seal)

**EXHIBIT 11**  
**GUARANTY FORMS**

Exhibit 11-1	Form of D&C Guaranty
Exhibit 11-2	Form of Maintenance Guaranty

## **EXHIBIT 11-1**

### **FORM OF D&C GUARANTY**

THIS GUARANTY (this "Guaranty") is made as of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of the ARIZONA DEPARTMENT OF TRANSPORTATION, an agency of the State of Arizona ("ADOT").

### **RECITALS**

A. Connect 202 Partners, LLC, as developer ("Developer"), and ADOT are parties to that certain Design-Build-Maintain Agreement (the "Agreement") pursuant to which Developer has agreed to design, construct and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce ADOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a Delaware limited liability company. The Guarantor is a \_\_\_\_\_. The execution of the Agreement by ADOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, ADOT would not have entered into the Agreement with Developer. Therefore, in consideration of ADOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

**1. Guaranty.** Guarantor guarantees to ADOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to (a) the D&C Work under the Contract Documents and (b) the Maintenance Services under the Contract Documents solely until the Maintenance Bonds and, as applicable, the Maintenance Guaranty have been provided by Developer as required in accordance with Sections 10.2 and 10.4 of the Agreement. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

**2. Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or



any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against ADOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

**3. Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. ADOT may maintain successive actions for other defaults of Guarantor. ADOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that ADOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require ADOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and ADOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Developer from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by ADOT as security for the performance by Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by ADOT of any remedies which ADOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the Developer under the Agreement. Accordingly, in the event that the Developer's obligations are changed by any modification, agreement or stipulation between Developer and ADOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

#### **4. Liability of Guarantor.**

a. ADOT may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between ADOT and Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. ADOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of ADOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that ADOT may have against any such security, as ADOT in its sole discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) ADOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against ADOT in respect of the Guaranteed Obligations, except as provided in Section 21.

**5. Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require ADOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by ADOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in ADOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of ADOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by ADOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (f) any defense based upon any act or omission of ADOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by ADOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

**6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without

limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of ADOT against Developer, or any other security or collateral that ADOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of ADOT. Any payment by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for ADOT.

**7. Waivers by Guarantor if Real Property Security.** If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. ADOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If ADOT forecloses on any real property collateral pledged by Developer:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) ADOT may collect from Guarantor even if ADOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

**8. Cumulative Rights.** All rights, powers and remedies of ADOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to ADOT, whether at law, in equity or otherwise.

**9. Representations and Warranties.** Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_ and *[select whichever is applicable]* *[is qualified to do business and is in good standing under the laws of the State of Arizona]* *[is not engaged in the conduct of business in the State of Arizona and therefore has not qualified to do business in the State of Arizona];*

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies ADOT may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of ADOT to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by ADOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or

compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

**10. Governing Law.** The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Arizona applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Arizona with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Maricopa County, Arizona.

**11. Entire Document.** This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by ADOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

**12. Severability.** If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

**13. Notices.** Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, addressed as follows:

If to ADOT: Arizona Department of Transportation  
206 S. 17th Avenue, MD 102A  
Phoenix, AZ 85007  
Attn: Robert Samour, P.E.  
Telephone: (602) 712-8274  
E-mail: [rsamour@azdot.gov](mailto:rsamour@azdot.gov)  
Facsimile: (602) 712-8315

With copies to: Office of the Arizona Attorney General  
Transportation Section  
1275 W. Washington Street

Phoenix, Arizona 85007  
Telephone: (602) 542-1680  
E-mail: [transportation@azag.gov](mailto:transportation@azag.gov)  
Facsimile: (602) 542-3646

If to Guarantor: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone : \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Either Guarantor or ADOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email communication shall be deemed received when actual receipt at the email address of the addressee is confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Mountain Standard Time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

**14. Captions.** The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

**15. Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and ADOT, but is not assignable by Guarantor without the prior written consent of ADOT, which consent may be granted or withheld in ADOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

**16. Construction of Agreement.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

**17. No Waiver.** Any forbearance or failure to exercise, and any delay by ADOT in exercising, any right, power or remedy hereunder will not impair any such

right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

**18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.**

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. ADOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of ADOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and ADOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay ADOT, or allow the claim of ADOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

**19. Attorneys' Fees.** Guarantor agrees to pay to ADOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by ADOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

**20. Joint and Several Liability.** If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

**21. Defenses.** Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all rights and defenses available to Developer under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to



formation of the Agreement, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT 11-2**

### **FORM OF MAINTENANCE GUARANTY**

THIS GUARANTY (this "Guaranty") is made as of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of the ARIZONA DEPARTMENT OF TRANSPORTATION, an agency of the State of Arizona ("ADOT").

### **RECITALS**

A. Connect 202 Partners, LLC, as developer ("Developer"), and ADOT are parties to that certain Design-Build-Maintain Agreement (the "Agreement") pursuant to which Developer has agreed to design, construct and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce ADOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a Delaware limited liability company. The Guarantor is a \_\_\_\_\_. The execution of the Agreement by ADOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, ADOT would not have entered into the Agreement with Developer. Therefore, in consideration of ADOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty.** Guarantor guarantees to ADOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to the Maintenance Services under the Contract Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made.

Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against ADOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

**3. Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. ADOT may maintain successive actions for other defaults of Guarantor. ADOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that ADOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require ADOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and ADOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Developer from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by ADOT as security for the performance by Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by ADOT of any remedies which ADOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the Developer under the Agreement. Accordingly, in the event that the Developer's obligations are changed by any modification, agreement or stipulation between Developer and ADOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

#### **4. Liability of Guarantor.**

a. ADOT may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between ADOT and Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. ADOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of ADOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that ADOT may have against any such security, as ADOT in its discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or

enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) ADOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against ADOT in respect of the Guaranteed Obligations, except as provided in Section 21.

**5. Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require ADOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by ADOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in ADOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of ADOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by ADOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (f) any defense based upon any act or omission of ADOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by ADOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

**6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of ADOT against Developer, or any other security or collateral that ADOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the

performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of ADOT. Any payment by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for ADOT.

**7. Waivers by Guarantor if Real Property Security.** If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. ADOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If ADOT forecloses on any real property collateral pledged by Developer:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) ADOT may collect from Guarantor even if ADOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

**8. Cumulative Rights.** All rights, powers and remedies of ADOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to ADOT, whether at law, in equity or otherwise.

**9. Representations and Warranties.** Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_ and [select whichever is applicable] [is qualified to do business and is in good standing under the laws of the State of Arizona] [is not engaged in the conduct of business in the State of Arizona and therefore has not qualified to do business in the State of Arizona];

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of

Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies ADOT may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of ADOT to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by ADOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.



**10. Governing Law.** The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Arizona applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Arizona with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Maricopa County, Arizona.

**11. Entire Document.** This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by ADOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

**12. Severability.** If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

**13. Notices.** Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, addressed as follows:

If to ADOT: Arizona Department of Transportation  
206 S. 17th Avenue, MD 102A  
Phoenix, AZ 85007  
Attn: Robert Samour, P.E.  
Telephone: (602) 712-8274  
E-mail: [rsamour@azdot.gov](mailto:rsamour@azdot.gov)  
Facsimile: (602) 712-8315

With copies to: Office of the Arizona Attorney General  
Transportation Section  
1275 W. Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 542-1680  
E-mail: [transportation@azag.gov](mailto:transportation@azag.gov)  
Facsimile: (602) 542-3646

If to Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email communication shall be deemed received when actual receipt at the email address of the addressee is confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Mountain Standard Time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

**14. Captions.** The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

**15. Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and ADOT, but is not assignable by Guarantor without the prior written consent of ADOT, which consent may be granted or withheld in ADOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

**16. Construction of Agreement.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

**17. No Waiver.** Any forbearance or failure to exercise, and any delay by ADOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

**18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.**

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. ADOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a

bankruptcy, reorganization, or similar proceeding, and the failure of ADOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and ADOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay ADOT, or allow the claim of ADOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

**19. Attorneys' Fees.** Guarantor agrees to pay to ADOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by ADOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

**20. Joint and Several Liability.** If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

**21. Defenses.** Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all rights and defenses available to Developer under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to formation of the Agreement, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1 **EXHIBIT 12**

2 **INSURANCE COVERAGE REQUIREMENTS**

3

4 **1. Builder's Risk Insurance During Construction**

5 At all times during the period from the commencement of Construction Work until  
6 Substantial Completion, Developer shall procure and keep in force, or cause to be  
7 procured and kept in force, a policy of builder's risk insurance as specified below.

8 (a) The policy shall provide coverage for "all risks" of direct physical  
9 loss or damage to the portions or elements of the Project under construction, including  
10 the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane,  
11 subsidence, and terrorism; shall contain extensions of coverage that are typical for a  
12 project of the nature of the Project; and shall contain only those exclusions that are  
13 typical for a project of the nature of the Project.

14 (b) The policy shall cover (i) all property, roads, buildings, structures,  
15 fixtures, materials, supplies, foundations, pilings, machinery and equipment to be  
16 incorporated into the Project that are part of or related to the portions or elements of the  
17 Project under construction, and the works of improvement, including permanent and  
18 temporary works and materials, and including goods intended for incorporation into the  
19 works located at the Site, in storage or in the course of inland transit on land to the Site,  
20 (ii) unless covered by commercial general liability insurance pursuant to Section 3 of  
21 this Exhibit 12, all existing property and improvements that are within the construction  
22 work zone and are or will be affected by the Construction Work, provided however that  
23 the policy may include a sublimit of not less than \$5,000,000 per occurrence for the  
24 property of others; (iii) unless covered by a property insurance policy of Developer  
25 approved by ADOT, the collocated office and ADOT's field offices as described in  
26 Sections GP 110.05.2 and 110.05.3 of the Technical Provisions, all areas appurtenant  
27 thereto, and all personal property (including office equipment), trade fixtures and  
28 Developer- or ADOT-owned alterations and utility installations therein; and (iv) valuable  
29 papers and restoration of data, plans and drawings.

30 (c) The policy shall provide coverage per occurrence of not less than  
31 \$200,000,000 of the covered property loss without risk of co-insurance; provided,  
32 however, that the policy may also include the following sublimits: (i) for earth movement  
33 and flood, not less than \$5,000,000 per occurrence and in the aggregate; (ii) for existing  
34 property improvements, not less than \$5,000,000 per occurrence; (iii) for building  
35 ordinance compliance and increased replacement cost due to any change in applicable  
36 codes or other Laws, not less than \$10,000,000 per occurrence; (iv) for "soft cost  
37 expense," not less than \$5,000,000 per occurrence; (v) for professional fees, not less  
38 than \$1,000,000 per occurrence; (vi) for demolition and debris removal, not less than  
39 \$50,000,000 per occurrence or 25% of the amount of physical loss or damage to the

insured property, whichever is less; and (vii) for goods in storage or in the course of inland transit, not less than \$5,000,000 per occurrence.

(d) Developer and ADOT shall be the named insureds on the policy. Developer also may, but is not obligated to, include Subcontractors as additional insureds as their respective interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other additional insureds. ADOT shall be named as loss payee under the policy. If ADOT, as loss payee, receives proceeds of such insurance for insured loss or damage, ADOT shall hold and apply such proceeds as provided in Section 11.3 of the Agreement.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, using form LEG 3 or equivalent, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) physical damage resulting from mechanical breakdown or electrical apparatus breakdown, (vii) demolition and debris removal coverage, (viii) the increased replacement cost due to any change in applicable codes or other Laws, (ix) expense to reduce loss, (x) building ordinance compliance, with the building ordinance exclusion deleted, and (xi) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence; provided however, for the perils of windstorm, flood and earthquake, the deductible may be expressed as a percentage of the policy limit not to exceed 5%.

## **2. Builder's Risk Insurance During the Maintenance Period**

Prior to commencing Capital Asset Replacement Work and continuing until completion thereof, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, subsidence, and terrorism; shall contain extensions of coverage that are typical for the nature of the construction work; and shall contain only those exclusions that are typical for the nature of the construction work (including the sublimits noted below).

(b) The policy shall cover all (i) property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings that are in the course of construction, including all existing property and improvements that are

1 within the construction work zone and are or will be affected by the Capital Asset  
2 Replacement Work, and (ii) machinery and equipment that are part of or in the course of  
3 the construction.

4 (c) The policy shall provide coverage per occurrence sufficient to  
5 reinstate the insured property for a limit not less than the probable maximum loss,  
6 without risk of co-insurance; provided, however, that the policy may also include the  
7 sublimits set forth in clause (e) below. Developer and its insurance consultant, or the  
8 insurer, shall perform the probable maximum loss analysis using industry standard  
9 underwriting practices. The probable maximum loss analysis and recommended policy  
10 limit based thereon shall be subject to the review and comment by ADOT to verify  
11 reasonableness under industry standard underwriting practices, prior to issuance of the  
12 policy or renewal of any policy.

13 (d) Developer and ADOT shall be the named insureds on the policy.  
14 Developer also may, but is not obligated to, include Subcontractors and other interested  
15 parties as additional insureds as their respective interests appear. The policy shall be  
16 written so that no acts or omissions of a named insured shall vitiate coverage of the  
17 other named insureds or additional insureds (as applicable). ADOT shall be named as  
18 loss payee under the policy. If ADOT, as loss payee, receives proceeds of such  
19 insurance for insured loss or damage, ADOT shall hold and apply such proceeds as  
20 provided in Section 11.3 of the Agreement.

21 (e) The policy shall include coverage for (i) foundations, including  
22 pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage  
23 resulting from machinery accidents but excluding normal and natural wear and tear,  
24 corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints  
25 and specifications, (iv) physical damage resulting from faulty work or faulty materials,  
26 but excluding the cost of making good such faulty work or faulty materials, using form  
27 LEG 3 or equivalent, (v) physical damage resulting from design error or omission but  
28 excluding the cost of making good such design error or omission, (vi) physical damage  
29 resulting from mechanical breakdown or electrical apparatus breakdown, (vii) demolition  
30 and debris removal coverage, which may be subject to a sublimit of at least  
31 \$25,000,000 if the general policy limit is higher, (viii) the increased replacement cost  
32 due to any change in applicable codes or other Laws, (ix) expense to reduce loss, (x)  
33 building ordinance compliance, with the building ordinance exclusion deleted, and (xi)  
34 "soft cost expense" (including costs of Governmental Approvals, mitigation costs,  
35 attorneys' fees, and other fees and costs associated with such damage or loss or  
36 replacement thereof), which may be subject to a sublimit of at least \$5,000,000 if the  
37 general policy limit is higher. If the general policy limit is higher, then coverages  
38 (viii) and (x) may be subject to an aggregate sublimit of at least \$10,000,000.

39 (f) The policy shall provide a deductible or self-insured retention not  
40 exceeding \$1,000,000 per occurrence; provided however, for the perils of windstorm,  
41 flood and earthquake, the deductible may be expressed as a percentage of the policy  
42 limit not to exceed 5%.

1   **3.   Commercial General Liability Insurance During the Construction Period**

2           At all times during the Construction Period and for the Warranty Term, Developer  
3 shall procure and keep in force, or cause to be procured and kept in force, in its own  
4 name, commercial general liability insurance as specified below.

5           (a)    The policy shall be in form reasonably acceptable to ADOT, and  
6 shall be an occurrence form. The policy shall contain extensions of coverage that are  
7 typical for a project of the nature of this Project, and shall contain only those exclusions  
8 that are typical for a project of the nature of this Project.

9           (b)    The policy shall insure against the legal liability of the insureds  
10 named in Section 4(d) of this Exhibit 12, relating to claims by third parties for accidental  
11 death, bodily injury or illness, property damage, personal injury and advertising injury,  
12 and shall include the following specific coverages:

13                   (i)    Contractual liability;

14                   (ii)   Premises/operations;

15                   (iii)   Independent contractors;

16                   (iv)   Products and completed operations coverage with an  
17 extended reporting period until expiration of the statute of repose set forth at  
18 Arizona Revised Statutes, Section 12-552 (with acknowledgement that the  
19 Project constitutes the premises and not a product);

20                   (v)    Broad form property damage, providing the same or  
21 equivalent coverage as ISO form CG 00 01 10 93 provides;

22                   (vi)   Hazards commonly referred to as "XCU", including  
23 explosion, collapse and underground property damage;

24                   (vii)   Fellow employee coverage for supervisory personnel;

25                   (viii)   Incidental medical malpractice;

26                   (ix)    No exclusion for work performed within 50 feet of a railroad;

27                   (x)    No exclusion for claims arising from Professional Services  
28 except for CG 22 80 or its equivalent;

29                   (xi)    Broad named insured endorsement; and

30                   (xii)   Hired/non-owned automobile liability, unless covered by the  
31 automobile liability policy pursuant to Section 5 of this Exhibit 12.

32           (c)    The policy shall have limits of not less than \$10,000,000 per  
33 occurrence/\$20,000,000 aggregate with the aggregate applicable either specifically for



1 this Project or on a per project basis. Developer may satisfy the project specific or per  
2 project aggregate requirement via an ISO form CG 25 03 endorsement to a corporate  
3 commercial general liability policy. Such limits shall be shared by all insureds and  
4 additional insured parties.

5 (d) ADOT and the Indemnified Parties shall be named as additional  
6 insureds, using ISO form CG 20 10 04 13 and ISO form CG 20 37 04 13 or equivalent.  
7 The policy shall be written so that no act or omission of a named insured shall vitiate  
8 coverage of the other named insureds and the additional insureds.

9 (e) The policy shall provide a deductible or self-insured retention not  
10 exceeding \$1,000,000 per occurrence.

11 (f) The liability coverage shall include occurrences at or involving the  
12 collocated office and ADOT's field offices as described in Sections GP 110.05.2 and  
13 110.05.3 of the Technical Provisions, and all areas appurtenant thereto.

#### 14 **4. Commercial General Liability Insurance During the Maintenance Period**

15 At all times during the Maintenance Period, Developer shall procure and keep in  
16 force, or cause to be procured and kept in force, commercial general liability insurance  
17 as specified below.

18 (a) The policy shall be in form reasonably acceptable to ADOT, and  
19 shall be an occurrence form. The policy shall contain extensions of coverage that are  
20 typical for a project of the nature of this Project, and shall contain only those exclusions  
21 that are typical for a project of the nature of this Project.

22 (b) The policy shall insure against the legal liability of the insureds  
23 named in Section 4(d) of this Exhibit 12, relating to claims by third parties for accidental  
24 death, bodily injury or illness, property damage, personal injury and advertising injury,  
25 and shall include the following specific coverages:

26 (i) Contractual liability;

27 (ii) Premises/operations;

28 (iii) Independent contractors;

29 (iv) Products and completed operations coverage for claims  
30 made within an extended reporting period of eight years after substantial  
31 completion of any work of installation, construction, reconstruction, replacement  
32 or other capital improvement, including any Capital Asset Replacement Work,  
33 performed during the policy period (with acknowledgement that the Project  
34 constitutes the premises and not a product);

35 (v) Broad form property damage, providing the same or  
36 equivalent coverage as ISO form CG 00 01 10 93 provides;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) No exclusion for claims arising from Professional Services except for CG 22 80 or its equivalent;

(xi) Broad named insured endorsement; and

(xii) Hired/non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 5 of this Exhibit 12.

(c) The policy shall have limits of not less than \$5,000,000 per occurrence/\$10,000,000 aggregate applicable either specifically for this project or on a per project basis. Developer may satisfy the project specific or per project aggregate requirement via an ISO form CG 25 03 endorsement to a corporate commercial general liability policy.

(d) ADOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 04 13, and ISO form CG 20 37 04 13 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insureds and the additional insureds.

(e) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

## **5. Automobile Liability Insurance**

At all times during the performance of the Work and during the Term, Developer shall procure and keep in force comprehensive, business or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Developer shall be the named insured under its automobile liability policy. ADOT shall be named as an additional insured with respect to the automobile liability policy. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insureds and the additional insureds.

1 (c) Developer's policy shall have a limit per policy period of not less  
2 than \$1,000,000 combined single limit.

3 (d) Each policy shall provide a deductible (but not self-insured  
4 retention) not exceeding \$1,000,000 per occurrence but only if the primary policy and  
5 any excess policy are written to obligate the insurers to compensate the claimant on a  
6 first dollar basis.

## 7 **6. Pollution Liability Insurance**

8 Developer shall procure and maintain, or cause to be procured and maintained, at  
9 all times throughout the Term contractor's pollution liability insurance against claims for  
10 injuries to persons or damages to property which may arise from or in connection with  
11 the performance of the work hereunder by Developer, its agents, representatives,  
12 employees or subcontractors.

13 (a) The contractor's pollution liability policy shall cover losses caused  
14 by pollution conditions that arise from the operations of Developer described under the  
15 scope of services in the Contract Documents, such covered losses to include:

16 (i) Bodily injury, sickness, disease, mental anguish or shock  
17 sustained by any person, including death;

18 (ii) Medical monitoring;

19 (iii) Property damage including physical injury to or destruction  
20 of tangible property, including the resulting loss of use thereof, clean-up costs,  
21 and the loss of use of tangible property that has not been physically injured or  
22 destroyed;

23 (iv) Defense costs, including costs, charges and expenses  
24 incurred in the investigation, adjustment or defense of claims for such  
25 compensatory damages;

26 (v) Non-owned disposal site coverage for specified sites (by  
27 endorsement) if contractor is disposing of waste(s); and

28 (vi) loss, clean-up costs and related legal expense because of a  
29 pollution condition arising from the named insured's goods, products, or waste  
30 during the course of transportation by a carrier to or from: (1) a job site where  
31 contracting services are being performed; or (2) a covered location, including  
32 loading or unloading of such goods, products or waste, which the insured  
33 becomes legally obligated to pay.

34 (b) Coverage shall apply to sudden and non-sudden pollution  
35 conditions including the discharge, dispersal, release or escape of smoke, vapors, soot,  
36 fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants,  
37 contaminants or pollutants into or upon land, the atmosphere or any watercourse or

body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of covered operations.

(c) The policy shall be written on an occurrence basis.

(d) Developer shall maintain limits no less than \$10,000,000 per occurrence/\$10,000,000 aggregate during the D&C Period and no less than \$5,000,000 per occurrence/\$5,000,000 aggregate during the Maintenance Period.

(e) The policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per occurrence.

(f) For coverage during the D&C Period, the policy shall include a five-year completed operations/extended reporting period that shall begin on the Substantial Completion Date.

(g) ADOT shall be named as an additional insured on the policy.

## **7. Umbrella Liability Insurance**

Developer shall procure, or cause to be procured and maintained, umbrella/excess liability insurance on a following form basis, including coverage for all named and additional insureds, as follows:

(a) During the D&C Period, limits of \$100,000,000 per occurrence/aggregate with limits reinstating annually, except for the aggregate limit for completed operations, which shall be a single aggregate, and applying over the commercial general liability, automobile liability (if any), and employer's liability insurance policies required by this Exhibit 12.

(b) During the Maintenance Period, limits of \$75,000,000 per occurrence/aggregate with limits reinstating annually and applying over the commercial general liability, automobile liability (if any), and employer's liability insurance policies required by this Exhibit 12.

(c) Developer may satisfy the coverage requirement via an ISO form CG 25 03 endorsement to a corporate commercial general liability policy.

## **8. Professional Liability Insurance**

### **(a) D&C Work: Lead Engineering Firm and Its Professional Services Subcontractors (First Alternative)**

Commencing on the date of issuance of NTP2 with a retroactive date to the date that Professional Services are first rendered respecting the Project and until the conclusion of all Professional Services in connection with the D&C Work, Developer shall procure and keep in force, or shall cause the Lead Engineering Firm to procure

1 and keep in force, professional liability insurance as specified in subparagraphs (i)  
2 through (vi) below.

3 (i) The insurance policy shall provide coverage of liability of the  
4 Lead Engineering Firm and all Subcontractors at all tiers under the Lead Engineering  
5 Firm performing the Professional Services arising out of any negligent act, error or  
6 omission in the performance of Professional Services for the Project, including for bodily  
7 injury or property damage.

8 (ii) The insurance policy shall have a limit of not less than  
9 \$30,000,000 per claim and in the aggregate. The aggregate limit need not reinstate  
10 annually.

11 (iii) The insurance policy shall provide a deductible or self-  
12 insured retention not exceeding \$1,000,000 per claim.

13 (iv) The insurance policy shall be project-specific.

14 (v) The insurance policy shall specifically include an extended  
15 reporting period expiring no sooner than the earlier of (A) eight years after the  
16 Substantial Completion Date or (B) ten years after issuance of NTP 2.

17 **(b) D&C Work: Developer; Lead Engineering Firm and Its Professional**  
18 **Services Subcontractors (Second Alternative)**

19 As an alternative to subsection (a) above, Developer, on the one hand,  
20 and the Lead Engineering Firm, on the other hand, may separately procure and keep in  
21 force two policies of professional liability insurance as specified in subparagraphs (i)  
22 through (v) below.

23 (i) One insurance policy, to be procured by the Lead  
24 Engineering Firm, shall provide coverage of liability of the Lead Engineering Firm and all  
25 Subcontractors at all tiers under the Lead Engineering Firm performing the Professional  
26 Services arising out of any negligent act, error or omission in the performance of  
27 Professional Services for the Project, including for bodily injury or property damage.  
28 The other insurance policy, to be procured by Developer, shall be a contractor's  
29 protective professional indemnity policy that provides coverage of Developer with  
30 protective indemnity limits excess of the limits of the Lead Engineering Firm's  
31 professional liability policies.

32 (ii) The insurance policy for the Lead Engineering Firm and all  
33 Subcontractors at all tiers under the Lead Engineering Firm shall have a limit of not less  
34 than \$10,000,000 per claim and in the aggregate. The contractor's protective  
35 professional indemnity policy for Developer shall have protective indemnity limits excess  
36 of the limits of the Lead Engineering Firm's policy such that the sum of the policy limits  
37 under the two policies is not less than \$30,000,000 per claim and aggregate. For both  
38 policies, the aggregate limit need not reinstate annually.

(iii) The insurance policy for the Lead Engineering Firm and all Subcontractors at all tiers under the Lead Engineering Firm shall provide a deductible or self-insured retention not exceeding \$1,000,000 per claim. The contractor's protective professional indemnity policy for Developer shall be written to provide coverage without first requiring exhaustion of any deductibles or self-insured retentions under underlying policies other than the foregoing deductible or self-insured retention.

(iv) Both insurance policies shall be project-specific.

(v) Both insurance policies shall specifically include an extended reporting period expiring no sooner than the earlier of (A) eight years after the Substantial Completion Date or (B) ten years after issuance of NTP 2.

### **(c) Other Professional Services**

In addition, Developer shall cause each other Subcontractor that provides Professional Services for the Project or the Maintenance Period, as applicable, and not insured pursuant to Section 8(a) or 8(b) of this Exhibit 12, including the Independent Quality Firm, to procure and keep in force professional liability insurance, covering its Professional Services practice, of not less than \$2,000,000 per claim and in the aggregate per annual policy period.

(i) Each policy shall insure against liability, including for bodily injury or property damage, arising out of any negligent act, error or omission in the performance of Professional Services in connection with the installation, construction, reconstruction, replacement or other capital improvement, including any Capital Asset Replacement Work.

(ii) The aggregate limit shall reinstate annually.

(iii) The insurance policy shall include a commercially reasonable deductible.

(iv) Each such professional liability policy shall be kept in force until the earlier of (A) eight years after the insured's Professional Services in connection with the installation, construction, reconstruction, replacement or other capital improvement, including any Capital Asset Replacement Work, have concluded, or (B) ten years after issuance of NTP 2.

(v) The date of inception of coverage in all cases must precede the effective date of the applicable Subcontract.

## **9. Workers' Compensation Insurance**

At all times when Work is being performed by any employee of Developer or any Subcontractor, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Developer and/or the Subcontractors, whichever is

1 the applicable employer, shall be the named insured on these policies. The workers'  
2 compensation insurance policy shall contain the following endorsements:

3 (a) An endorsement extending the policy to cover the liability of the  
4 insureds under the Federal Employer's Liability Act only if performing railroad related  
5 work;

6 (b) A voluntary compensation endorsement;

7 (c) An alternative employer endorsement;

8 (d) An endorsement extending coverage to all states operations on an  
9 "if any" basis; and

10 (e) Coverage for United States Longshore and Harbor Workers Act  
11 and Jones Act claims, as may be appropriate and required.

## 12 **10. Employer's Liability Insurance**

13 At all times during the Term, Developer shall procure and keep in force, or cause  
14 to be procured and kept in force, employer's liability insurance as specified below.

15 (a) The policy shall insure against liability for death, bodily injury,  
16 illness or disease for all employees of Developer and all Subcontractors working on or  
17 about any Site or otherwise engaged in the Work.

18 (b) Developer and/or the Subcontractor, whichever is the applicable  
19 employer, shall be the named insured.

20 (c) The policy shall have a limit of not less than \$1,000,000 (during the  
21 D&C Period) and \$1,000,000 (during the Maintenance Period) per accident and in the  
22 aggregate during the period of insurance, and may be included in an umbrella insurance  
23 policy combined with such other insurance that this Exhibit 12 stipulates may be  
24 similarly included.

## 25 **11. Railroad Insurance**

26 Developer shall procure and keep in force, or cause to be procured and kept in  
27 force, prior to performing any Work across, under or adjacent to the railroad's tracks or  
28 railroad right-of-way, a railroad protective liability insurance policy as may be required  
29 by the operating railroad.

30 All insurance policies shall be in a form acceptable to the operating railroad and  
31 shall name the railroad as the named insured. Copies of all insurance policies shall be  
32 submitted to ADOT prior to any entry by Developer upon operating railroad property. If  
33 any agreement between ADOT and a railroad, or between Developer and a railroad,  
34 includes insurance requirements applicable to the Work, Developer shall procure and

1 keep in force or cause to be procured and kept in force, insurance meeting such  
2 requirements.

## 3 **12. Subcontractors' Insurance**

4 (a) At all times during the Term, Developer shall cause each  
5 Subcontractor that performs work on the Site to provide commercial general liability  
6 insurance that complies with Article 11 of the Agreement, with limits of at least  
7 \$1,000,000 per occurrence/\$2,000,000 aggregate. For any Subcontractor undertaking  
8 work with an estimated contract value of \$5,000,000 or more, the commercial general  
9 liability limits shall be supplemented with an umbrella/excess liability insurance policy  
10 with a minimum limit of \$5,000,000, on a following-form basis, unless the Subcontractor  
11 is specifically covered by Developer-provided liability insurance. Developer shall cause  
12 each such Subcontractor that provides such insurance to include ADOT and each of the  
13 Indemnified Parties as additional insureds under such Subcontractor's liability insurance  
14 policies. Such commercial general liability insurance shall be Project-specific.  
15 Developer may satisfy the project specific requirement via ISO form CG 25 03 and CG  
16 20 37 endorsements to a corporate commercial general liability policy.

17 (b) At all times during the Term, Developer shall cause each  
18 Subcontractor that has vehicles on the Site or uses vehicles in connection with the work  
19 to procure and keep in force, comprehensive, business or commercial automobile  
20 liability insurance meeting the requirements as specified below.

21 (i) Each policy shall cover accidental death, bodily injury and  
22 property damage liability arising from the ownership, maintenance or use of all  
23 owned, non-owned and hired vehicles connected with performance of the Work.  
24 The policy shall contain extensions of coverage that are typical for a project of  
25 the nature of the Project, and shall contain only those exclusions that are typical  
26 for a project of the nature of the Project.

27 (ii) Each such Subcontractor shall be the named insured under  
28 its respective automobile liability policy.

29 (iii) Each policy shall have a combined single limit per policy  
30 period of not less than \$1,000,000.

31 (iv) Each policy shall include ADOT and each of the Indemnified  
32 Parties as additional insureds.

33 (c) At all times when Work is being performed by any employee of a  
34 Subcontractor, Developer shall cause Subcontractor to procure and keep in force, or  
35 cause to be procured and kept in force, a policy of workers' compensation insurance for  
36 the employee in conformance with applicable Law. Subcontractor shall be the named  
37 insured on these policies. The workers' compensation insurance policy shall contain  
38 the following endorsements:



1 (i) An endorsement extending the policy to cover the liability of  
2 the insureds under the Federal Employer's Liability Act only if performing railroad  
3 related work;

4 (ii) A voluntary compensation endorsement;

5 (iii) An alternative employer endorsement;

6 (iv) An endorsement extending coverage to all states operations  
7 on an "if any" basis; and

8 (v) Coverage for United States Longshore and Harbor Workers  
9 Act and Jones Act claims, as appropriate and required.

10 (d) At all times during the Term, Developer shall cause each  
11 Subcontractor to procure and keep in force employer's liability insurance as specified  
12 below.

13 (i) The policy shall insure against liability for death, bodily  
14 injury, illness or disease for all employees of the Subcontractor working on or  
15 about any Site or otherwise engaged in the Work.

16 (ii) The Subcontractor shall be the named insured.

17 (iii) The policy shall have a limit of not less than \$1,000,000 per  
18 accident and in the aggregate during the period of insurance, and may be  
19 included in an umbrella insurance combined with such other insurance that this  
20 Exhibit 12 stipulates may be similarly included.

21 (e) ADOT shall have the right to contact the Subcontractors directly in  
22 order to verify the above coverages, if Developer does not provide verification of such  
23 Subcontractor coverage as and when required under Section 11.1.5 of the Agreement.

### 24 **13. Increases in Coverage Amounts**

25 For clarity, the increases under Section 11.1.18 of the Agreement to the  
26 minimum limits or sublimits stated in this Exhibit 12 of policies carried during the  
27 Maintenance Period shall be determined as of the inception of the applicable policy  
28 period.

**EXHIBIT 13**

**CONTRACT MODIFICATION REQUEST FORM**

**[See attached]**



**ALTERNATIVE DELIVERY**  
**CONTRACT MODIFICATION REQUEST**

Request # \_\_\_\_\_

CM @ R ☐  
Design-Build ☐

Page \_\_\_\_ of \_\_\_\_

Contractor:	Project No.:	TRACS No.:	Date:
Project Manager:	Design Firm:	Initiator:	

**Request Change (What):**

FA                      NFA  
*Rough order of magnitude*      \$ \_\_\_\_\_      \$ \_\_\_\_\_

**Reason/Justification (Why):**

**General Supplemental Agreement Types:**

**List Technical Managers:**

*If Other, please explain:*

**ADOT Recommendation:**

<b>Concept Recommended</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	<b>Date:</b> _____
<b>Attachment</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Senior/Resident Engineer	
<b>Concept Recommended</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	<b>Date:</b> _____
<b>Attachment</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Construction Manager	
<b>Concept Recommended</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	<b>Date:</b> _____
<b>Attachment</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Sr. Deputy State Engineer, Operations State Engineer's Office	

Concept Recommended    Yes ☐    No ☐ Eligible for Federal Reimbursement    Yes ☐    No ☐

Date:

FHWA

*Any decision to approve the change to contract terms will be within the sole discretion of ADOT and is dependent on the documentation that is submitted into the Supplemental Agreement Tracking System (SATS).*

## **EXHIBIT 14**

### **EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS**

This Exhibit 14 sets forth the methods for calculating Extra Work Costs and Delay Costs owing from ADOT to Developer under the Agreement.

#### **1. EXTRA WORK COSTS**

At the sole discretion of ADOT, Extra Work Costs shall be determined on either a negotiated lump sum or force account basis, as described in this Section 1.

##### **1.1 Negotiated Lump Sum**

**1.1.1** When Extra Work Costs are determined on a lump sum basis, such Extra Work Costs shall be negotiated based on:

- (a)** Estimated costs of labor;
- (b)** Estimated costs of material;
- (c)** Estimated costs of equipment;
- (d)** Actual fees and charges (e.g., permit fees, plan check fees, review fees and charges) of Governmental Entities in connection with Governmental Approvals required to perform the Extra Work;
- (e)** Extra insurance costs and extra costs of bonds and letters of credit;
- (f)** Other estimated direct costs; and
- (g)** Estimated risk associated with the lump sum pricing.

**1.1.2** Negotiated lump sum Extra Work Costs shall also include a reasonable, negotiated markup for Subcontractor indirect costs, field office overhead and profit and Developer indirect costs, field office overhead and profit. The negotiated lump sum shall not include any home office overhead of Developer or Subcontractors.

**1.1.3** The price of a negotiated lump sum for Extra Work Costs shall be based on the original allocations of pricing to comparable activities, materials and equipment, as indicated in Exhibit 2-4 (Pricing Tables) and other sources of Developer's Proposal pricing information (such as the Detailed Pricing Documents or DPDs), whenever possible. If requested by ADOT, price negotiations for lump sum Extra Work Costs shall be on an Open Book Basis.

**1.1.4** In pricing any negotiated lump sum for Extra Work Costs,

Developer shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption under applicable Law.

## **1.2 Force Account**

When Extra Work Costs are determined on a force account basis, ADOT will pay Developer for the direct costs of labor, materials and equipment used, and fees and charges of Governmental Entities in connection with Governmental Approvals required, to perform the Extra Work, plus markup for labor burden costs, indirect costs, overhead and profit, as set forth in and as limited by this Section 1.2.

### **1.2.1 Labor**

**1.2.1.1** Extra Work Costs for force account Extra Work shall include the cost of labor for workers used in the actual and direct performance of the force account Extra Work and labor costs directly attributable to pursuing and obtaining Governmental Approvals, if any, required to perform the force account Extra Work. Workers include foremen actually engaged in the performance of the Extra Work or in direct charge of specific operations included in the force account Extra Work. Workers do not include Project superintendence personnel or any on-site clerical staff, except as provided in Section 1.2.5 below. In no case shall an officer or director of Developer, an Affiliate or any Subcontractor, nor those persons who own more than one percent of Developer, an Affiliate or any Subcontractor, be considered Project superintendence personnel, workers or foremen under this Section 1.2.1.

**1.2.1.2** For workers who are not Project superintendence personnel, the force account Extra Work Cost of labor, whether the employer is Developer, an Affiliate, or a Subcontractor, will be the sum of the following.

#### **(a) Regular Pay**

Regular pay (RP), which will be determined as follows:

$$RP = (WR + FR) \times 1.5$$

Where:

WR = hourly wage as determined by payroll records;

FR = fringe benefit rate as determined by payroll records;

and

1.5 = the labor multiplier providing for a 35 percent labor burden rate and 15 percent markup for indirect costs, overhead and profit. ADOT views the burden for labor as the total of all indirect labor costs necessary for a worker to perform the work that the worker is hired to perform. Therefore, such burden includes Social Security and Medicare Tax, Worker's Compensation (that is, insurance the employer must purchase), State and federal unemployment insurance, training, paid

holidays, use of vehicles, PPE (personal protective equipment), office, office furniture, equipment, supplies, etc.

Developer shall provide to ADOT the hourly wage rates and fringe benefit rates before the start of the force account Extra Work as part of Developer's Relief Request or response to Request for Change Proposal, as applicable, required under Sections 14.1.3 and 15.1.3 of the Agreement, respectively. ADOT may verify the hourly wage rates and fringe benefit rates by comparing such rates to actual payroll records or signed timesheets of Developer, Affiliates or Subcontractors, as applicable. The terms of this paragraph shall apply not only with respect to this Section 1.2.1.2(a), but also Section 1.2.1.2(b) below.

**(b) Overtime Pay**

Overtime pay (OT), which is determined as follows:

$$OT = [(WR \times 1.5) + FR] \times 1.5$$

Where:

WR, FR and 1.5 are as provided in Section 1.2.1.2(a) above.

**(c) Subsistence and Travel Allowance**

The actual subsistence and travel allowances paid to the workers as required by collective bargaining agreements or as approved by ADOT. Rates for subsistence and travel allowances, including rates for lodging, meals and mileage, shall not exceed the rates in effect in ADOT's Policies and Procedures "FIN-6.02 Travel Authorization Policy" at the time the force account Extra Work is performed. Developer shall not markup, and ADOT will not pay any markup on, travel or subsistence allowances.

**1.2.2 Materials**

**1.2.2.1 ADOT-Furnished Materials**

ADOT reserves the right to furnish any materials it deems appropriate for use in force account Extra Work, and Developer shall have no claims for any costs, overhead or profit on the materials provided by ADOT.

**1.2.2.2 Developer-Furnished Materials**

Developer may include in Extra Work Costs materials furnished by Developer only if the materials meet the requirements of the Contract Documents, are necessary to perform, and are actually used to perform, the force account Extra Work. The cost of those materials will be the actual invoice cost to the purchaser of such materials — whether the purchaser is Developer, an Affiliate, or a Subcontractor — from the Supplier thereof, including actual freight and express charges, except as the

following are applicable:

**(a) Discounts and Rebates**

If a cash, trade or other discount or rebate is offered or available to the purchaser, the discount or rebate shall be credited to ADOT even if the discount or rebate is not taken by the purchaser.

**(b) Non-direct Purchases**

If materials are procured by the purchaser by any method that is not a direct purchase from a direct billing by the actual Supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual Supplier as determined by ADOT plus the actual costs, if any, incurred in the handling of the materials.

**(c) Purchaser-supplied Materials**

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the lower of: (i) the price the purchaser paid for similar materials furnished from that source and used to perform other Work; or (ii) the current wholesale price for those materials delivered to the Site.

**(d) Excessive Costs**

If the cost of the materials is, in the opinion of ADOT, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities delivered to the Site, less any discounts or rebates as provided in Section 1.2.2.2(a) above.

**(e) Evidence of Cost**

ADOT will pay Developer for materials only after the materials invoice is submitted by Developer to ADOT along with any documentary backup for the cost of the materials, less any discounts as provided Section 1.2.2.2(a) above.

**1.2.3 Equipment Rental**

**1.2.3.1 General Equipment Rental Provisions**

Force account Extra Work Costs for the use of equipment owned by Developer, an Affiliate or a Subcontractor shall be determined at the rental rates listed for that equipment in the current edition and appropriate volume of the Rental Rate Blue Book (RRBB) as published by EquipmentWatch®, which is in effect on the date upon which the force account Extra Work is performed, regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Developer or any Subcontractor, modified, however, in accordance with



the formula below. The hourly equipment rental rate (HERR) in such circumstances will be determined in accordance with the following formula (which does not include operators):

$$\text{HERR} = (F \times \{[1.15 \times R] / 176\}) + \text{HOC}$$

Where:

F = ADOT adjustment factor to R as follows: 0.933;

R = the then current monthly rate as published in the then current RRBB; and

HOC = hourly operation cost;

provided, however, that the following provisions (a) through (k) shall apply.

**(a)** Developer shall not charge for those pieces of equipment with a rental rate of \$5.00 per hour or less as listed in the RRBB. The \$5 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

**(b)** An overhead and profit adjustment of 15 percent of the rates provided in the RRBB is included in the above formula.

**(c)** If ADOT concurs that it is necessary to use equipment owned by Developer, an Affiliate or a Subcontractor that is not listed in the RRBB, ADOT will establish a suitable rental rate for that equipment. Developer may furnish any cost data which might assist ADOT in the establishment of the rental rate. If the rental rate established by ADOT is \$5.00 per hour or less, the provisions of Section 1.2.3.1(a) above shall apply.

**(d)** The hourly operating cost as provided above shall include the major costs of equipment operation, such as the cost of fuel, oil, lubrication, supplies, field repairs, tires, expendable parts, up to one necessary attachment per piece of equipment, maintenance, depreciation, storage and insurance.

**(e)** When multiple attachments are necessary or included for a piece of equipment, only the attachment having the highest rate will be included for the purpose of calculating force account Extra Work Costs, provided that the attachment has been approved by ADOT as being necessary to the force account Extra Work.

**(f)** The cost of labor for operators of rented equipment shall be determined as provided in Section 1.2.1 above ("Labor").

**(g)** For costs of equipment to be eligible for inclusion in force account Extra Work Costs, the equipment must be in good working condition

and suitable for the purpose for which the equipment is to be used. Developer shall handle and use the equipment to provide normal output or normal production. All equipment is subject to approval by ADOT. Equipment that is not in good working order or that is not of proper size for efficient performance of the force account Extra Work may be rejected by ADOT. Rental time shall apply to eligible equipment used for force account Extra Work to establish or calculate the Extra Work Costs related thereto or resulting therefrom until such time as ADOT directs that the use of such equipment be discontinued or until completion of the relevant work.

(h) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit must be powered by a unit of at least the minimum rating recommended by the manufacturer.

(i) Extra Work Costs shall not include the costs of small tools. Individual pieces of equipment or tools not listed in the RRBB and having a replacement value of \$400 or less, regardless of whether consumed by use, shall be considered to be small tools, ineligible to be included in force account Extra Work Costs. The \$400 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(j) Rental time will not be allowed while equipment is inoperative due to breakdowns.

(k) For each piece of equipment to be used to perform force account Extra Work, whether owned by Developer, an Affiliate or a Subcontractor (and, therefore, covered by this Section 1.2.3.1) or rented (and covered by Section 1.2.3.3 below), equipment use hours shall be recorded and charged to the nearest one-half hour and Developer shall provide ADOT with the following additional information: the manufacturer's name; equipment type; year of manufacture; model number; type of fuel used; horsepower rating; attachments required, together with their size or capacity; and any other information necessary to determine the Extra Work Costs.

#### **1.2.3.2 Stand-By Time**

Force account Extra Work Costs for equipment owned by Developer, an Affiliate or a Subcontractor that is in operational condition and is standing by with ADOT's approval for participation in the force account Extra Work shall be determined in accordance with the following stand-by rate (SBR) formula:

$$\text{SBR} = F \times (R / 176) \times 0.5$$

Stand-by hours will be limited to not more than eight hours in a 24-hour day or 40 hours in a week. No hours will be allowed or included and force account Extra Work Costs shall not be paid for equipment that is inoperable. No hours shall be allowed or included and Extra Work Costs shall not be paid for equipment that is not operating because the force account Extra Work has been suspended by Developer.

### **1.2.3.3 Outside Rented Equipment**

In cases where a piece of equipment to be used for force account Extra Work is rented or leased by Developer from a third party (not an Affiliate or Subcontractor) exclusively for such force account Extra Work, the Extra Work Costs shall be determined in accordance with the following formula:

$$(\text{Rental Invoice} \times 1.10) + \text{HOC}$$

The above formula includes a 10 percent mark-up of the rental invoice for all overhead and incidental costs of furnishing the equipment.

### **1.2.3.4 Moving of Equipment**

**(a)** The rental time to be included in calculating Extra Work Costs for needed equipment shall be the time the equipment is in operation on the force account Extra Work being performed, and, in addition, shall include the time required to move the equipment to the location of the force account Extra Work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work. Loading and transporting costs will be included in force account Extra Work Costs, in lieu of moving time, when the equipment is moved by means other than its own power. However, moving time back to the original location or loading and transporting costs will not be included in the calculation of force account Extra Work costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work.

**(b)** For use of equipment moved from one location on the Site to another location on the Site exclusively for the force account Extra Work, the cost of transferring the equipment to the site of the force account Extra Work and returning it the original location may be included in the Extra Work Costs as specified in this Section 1.2.3.4.

**(c)** For use of equipment moved from a location not on the Site to a location on the Site, the original location of the equipment to be hauled to the Site shall be subject to ADOT's prior approval.

**(d)** Where the move of the equipment is made by common carrier, the force account Extra Work Costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount to cover profit and overhead. If Developer hauls the equipment with its own forces, rental will be included in the force account Extra Work Costs for hauling the unit plus the driver's wages and the cost of loading and unloading the equipment.

**(e)** For the purposes of determining Extra Work costs, the maximum rental period for the day that the equipment is moved to the location on the Site where the force account Extra Work is performed and the day that the use of

the equipment is discontinued for force account Extra Work shall be the actual time that the equipment is in operation on the force account Extra Work.

#### **1.2.4 Fees and Charges of Governmental Entities**

Extra Work Costs for force account Extra Work shall include fees and charges paid to Governmental Entities for Governmental Approvals required to perform the force account Extra Work. Developer shall not markup, and ADOT will not pay any markup on, such fees and charges.

#### **1.2.5 Superintendence**

Developer shall not include any part of the salary or expense of anyone connected with Developer's forces above the grade of foreman and having general supervision of the force account Extra Work in the Extra Work Costs covering labor items as specified above (see Section 1.2.1), except when Developer's organization, including its Equity Members and Lead Maintenance Firm, is entirely occupied with force account Extra Work, in which case the salaries of the superintendent and the timekeeper may be included in the Extra Work Costs for labor items specified above when the nature of the force account Extra Work is such that their services are required.

#### **1.2.6 Compensation**

Developer shall accept ADOT's payment of the Extra Work Costs as set forth above as payment in full for all Extra Work done on a force account basis. In addition, ADOT will pay Developer an amount equal to 65 percent of the force account Extra Work Costs compensation times the applicable sales tax rate to cover sales tax. ADOT shall not pay any other or additional amount for or on account of sales tax with respect to the force account Extra Work or the Extra Work Costs related thereto or resulting therefrom.

#### **1.2.7 Statements**

**1.2.7.1** Receipted invoices for all materials used and transportation charges must accompany and support all Developer's statements covering force account Extra Work Costs. If materials used on the force account Extra Work are not specifically purchased for such force account Extra Work but are taken from Developer's stock, then, instead of invoices, the statements must contain or be accompanied by an affidavit of Developer certifying that such materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to Developer.

**1.2.7.2** Developer shall submit, and shall ensure that Subcontractors submit, an equipment list for all equipment to be used during the performance of the force account Extra Work prior to the start of any force account Extra Work.

**1.2.7.3** Developer shall submit payrolls and other cost data

documents for all force account Extra Work within 30 days after completion of such force account Extra Work. ADOT will not make any payment prior to that time. All invoiced work must have documentation for payment. ADOT will not make any payment for Extra Work performed on a force account basis until Developer has furnished duplicate itemized statements of the Extra Work Costs of such force account Extra Work detailing the following:

- (a) Name, classification, date, daily hours, total hours, rate, and amount for each foreman and laborer;
- (b) Designation, dates, daily hours, total hours, rental rate, and amount for each unit of equipment;
- (c) Quantities of materials, prices and amounts; and
- (d) Transportation charges on materials, FOB the jobsite.

### **1.2.8 Force Account Extra Work by Affiliates**

**1.2.8.1** The direct costs of an Affiliate's labor, materials, and equipment used in performing force account Extra Work shall be limited in accordance with Section 9.7 of the Agreement.

**1.2.8.2** If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Developer, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra Work Costs.

### **1.2.9 Force Account Extra Work by Subcontractors**

When force account Extra Work is performed by Subcontractors, Developer is permitted, and Extra Work Costs may include, a supplemental markup of five percent of the Subcontractor's costs. This markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the force account Extra Work. ADOT will apply such allowance to the Subcontractor's force account Extra Work Costs less its markups for overhead and profit.

### **1.2.10 Bonds**

If, in connection with the Relief Event resulting in Extra Work, ADOT requires an increase in the amount of the D&C Performance Bond, D&C Payment Bond, Maintenance Performance Bond or Maintenance Payment Bond, as applicable, then ADOT will pay an additional amount equal to the lesser of (a) the incremental increase in the cost of such Bond(s) attributable thereto, or (b) .0.5 percent of the total amount otherwise calculated as the force account Extra Work Costs.

### **1.2.11 Non-Allowable Charges**

If Developer performs Extra Work on a force account basis, then ADOT will only compensate Developer for what is stated in the above provisions of this Section 1.2 ("Force Account"). However, in no case will Developer be reimbursed or paid for, and Extra Work Costs shall not include, the following items:

- (a) Profit in excess of that provided in this Section 1.2;
- (b) Loss of profit;
- (c) Home office overhead;
- (d) Consequential damages, including loss of bonding capacity, loss of bidding opportunities, or insolvency;
- (e) Indirect costs or expenses of any nature;
- (f) Attorneys' fees, claims preparation expenses, or costs of litigation; and
- (g) Interest.

## **2. DELAY COSTS**

Delay Costs shall be determined as follows:

### **2.1 Direct Cost of Idle Labor**

Compensation for the direct cost of the actual idle time of labor will be determined in the same manner as provided in Section 1.2.1 above ("Labor"). For recovery of this type of cost, however, Developer's daily reports must show that the workers were on Site, were unable to perform their work and could not have been shifted to other tasks or jobs.

### **2.2 Direct Cost of Idle Equipment**

Compensation for the direct cost of the actual idle time of equipment used in the performance of Extra Work will be determined in the same manner as determinations are made for force account Extra Work Costs for stand-by equipment, as provided in Section 1.2.3.2 above ("Stand-By Time") and subject to the following:

- (a) The Delay Costs will be determined for the actual normal working time during which the delay condition exists, but in no case will exceed eight hours in any 24-hour day or 40 hours in a week; and
- (b) The Delay Costs will be determined for the calendar days,

excluding Saturdays, Sundays and Holidays, during the existence of the delay, except that, when Extra Work Costs for rental of equipment are accruing under the provisions in Section 1.2.3.2 above, Delay Costs shall not include equipment rental costs for such equipment.

(c) If ADOT determines that idle equipment should not remain on the Site during a delay, then ADOT will pay the actual, reasonable costs, without markup, to: (i) demobilize the equipment during the delay period; and (ii) remobilize the equipment at the end of the delay period. Compensation for idle equipment will not be paid while the subject equipment is demobilized from the Site during a delay period.

### **2.3. Markup for Subcontractor Direct Costs of Idle Labor and Equipment**

In the case of a Relief Event Delay, Delay Costs shall include a markup of five percent of the direct costs of a Subcontractor's idle labor and equipment determined in accordance with Sections 2.1 above ("Direct Costs of Idle Labor") and 2.2 above ("Direct Costs of Idle Equipment"). This markup shall constitute full compensation for all labor-related and equipment-related indirect costs, expenses and profit related to such Relief Event Delay.

### **2.4 Where Delay is to Non-Controlling Work Item**

If the delay is to an item that is not a Controlling Work Item, then no indirect costs and expenses, and no profit, of Developer or any Subcontractor are allowable as Delay Costs.

### **2.5 Home Office Idled Labor and Equipment**

There shall be no home office costs of idled labor or idled equipment added for Developer or any Subcontractors.

## **EXHIBIT 15**

### **NONCOMPLIANCE EVENT TABLES**

Exhibit 15-1	D&C Period Noncompliance Event Table
Exhibit 15-2	Maintenance Period Noncompliance Event Table



**EXHIBIT 15-1**

**D&C PERIOD NONCOMPLIANCE EVENT TABLE**

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points Per Breach or Failure	Cure Period	Assessment Category
<b>Reporting &amp; Complying Activities</b>						
15.1-01	General	Governmental Approval	Prior to beginning construction, deliver to ADOT any executed copy of a Governmental Approval that Developer obtains as required by <u>Section 4.3</u> of the Agreement.	1	7 Days	B
15.1-02	General	ADOT Facilities	Comply with the operating and maintenance requirements of Section GP 110.05 of the Technical Provisions regarding office facilities and equipment.	2	If affecting life, safety and habitability – 48 hours  Other issues - 7 Days	A
15.1-03	General	ADOT Notification of monthly payments	Provide ADOT with notification of monthly payments to Subcontractors as required by <u>Section 13.8.1</u> of the Agreement.	1	30 Days	B
<b>Contract Activities</b>						
15.1-04	Contracting and Labor Practices	Disclosure of Subcontracts and Subcontractors	Comply with the Subcontract and Subcontractor submission requirements set forth in <u>Sections 9.4.2.1, 9.4.2.2 and 9.4.2.3</u> of the Agreement.	2	7 Days	B
<b>Project Management Activities</b>						
15.1-05	Project Management Plan	Audit	Carry out internal audits at the times prescribed in the Project Management Plan in accordance with <u>Section 3.4.7</u> of the Agreement.	2	7 Days	B

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points Per Breach or Failure	Cure Period	Assessment Category
15.1-06	Project Management Plan	Quality Management	Establish and maintain updates to the Quality Management Plan in accordance with Section GP 110.07.2.1 of the Technical Provisions.	2	7 Days	A
<b>Environmental Activities</b>						
15.1-07	Environmental Compliance	Environmental Management Plan	Maintain and update the complete Environmental Management Plan as required by Section DR 420 of the Technical Provisions.	3	7 Days	A
15.1-08	Environmental Compliance	Stormwater	Comply with the Section CR 420.3.2.2 of the Technical Provisions regarding SWPPP measures.	3	4 Days	A
15.1-09	Environmental Compliance	Notification	Notify ADOT of Hazardous Materials or a Recognized Environmental Condition as set forth in <u>Section 6.8</u> of the Agreement.	3	1 Day	A
15.1-10	Environmental Compliance	Property Access	Comply with property access requirements as required by Section CR 420.3.1 of the Technical Provisions and item DIS-4 in TP Attachment 420-1.	2	4 Hours	A
15.1-11	Environmental Compliance	Public Meetings	Organize public meetings and/or hearings as required by Sections CR 425.2.2 and CR 425.2.3.1 of the Technical Provisions.	2	30 Days	A
<b>Utilities Activities</b>						
15.1-12	Utility Adjustments	Maintain service	Maintain a utility service, fully operational in accordance with Section DR 430.3.5 of the Technical Provisions.	2	3 Days	A
15.1-13	Utility Adjustments	Record keeping	Maintain accurate records of Utility Adjustment Work or provide copies to ADOT in accordance with Section DR 430.3.3 of the Technical Provisions.	2	7 Days	A
<b>Design and Construction Activities</b>						
15.1-14	Design and Construction	Construction Warranties	Ensure extension of third parties warranties to ADOT or correct any defective Work that would void any such warranty all as required by <u>Article 12</u> of the Agreement.	2	14 Days	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points Per Breach or Failure	Cure Period	Assessment Category
15.1-15	Design and Construction	Land Surveys	Comply with the land survey requirements of Section CR 410.3.2 of the Technical Provisions.	2	7 Days	A
15.1-16	Design and Construction	Testing	Provide test results or reports as required by <u>Section 3.8</u> of the Agreement.	2	7 Days	A

**EXHIBIT 15-2****MAINTENANCE PERIOD NONCOMPLIANCE EVENT TABLE**

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Non Compliance Points Per Breach or Failure	Cure Period	Assessment Category
<b>PLANNING AND REPORTING</b>						
15.2-01	Reporting	Respond to ADOT notification	Failure to respond to Notification from ADOT and other public entities regarding Project deficiencies as required by Section MR 400.1 of the Technical Provisions.	2	3 Business Days	A
15.2-02	Reporting	Prepare and update MMP	Failure to prepare and update the Maintenance Management Plan (MMP) as required by Section MR 400.3.4D of the Technical Provisions.	2	10 Business Days	A
15.2-03	Reporting	Update MIS with inspection reports	Failure to make entry into the Maintenance Information System (MIS) concerning Inspection or Noncompliance Events, including the results and required actions, as per Section 17.2.1.1 of the Agreement and Section MR 400.2.4 of the Technical Provisions.	1	5 Business Days	A
15.2-04	Plan - Safety	Submit reports to ADOT for review and acceptance	Failure to prepare and submit a Maintenance Safety Management Plan (MSMP) and updates in accordance with Sections MR 400.2.1.1 and MR 400.3.4D of the Technical Provisions.	2	3 Business Days	A
15.2-05	Plan – Quality Control	Submit reports to ADOT for review and acceptance	Failure to prepare and submit a Maintenance Quality Management Plan (MQMP) and updates in accordance with Section MR 400.2.1.2 and MR 400.3.4D of the Technical Provisions.	2	10 Business Days	A
15.2-06	Surveillance and Inspections	Surveillance and Inspection activities	Failure to perform timely Surveillance and Inspection of the Project in accordance with Sections MR 400.3.1 and MR 400.3.2 of the Technical Provisions.	2	5 Business Days	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Non Compliance Points Per Breach or Failure	Cure Period	Assessment Category
15.2-07	Reporting	Submit report to ADOT for review and acceptance	Failure to prepare any Monthly Maintenance Services Report and submit to ADOT in accordance with Section MR 400.3.4A of the Technical Provisions and <u>Section 17.2.1.3</u> of the Agreement.	1	10 Business Days	A
15.2-08	Reporting	Submit reports to ADOT for review and acceptance	Failure to prepare any Annual Maintenance Services Report and submit to ADOT in accordance with Section MR 400.3.4B of the Technical Provisions.	2	3 Business Days	A
15.2-09	Reporting	Handback Plan and Handback Transition Plan	Failure to prepare and submit a: <ul style="list-style-type: none"> <li>• Draft Handback Plan,</li> <li>• Final Handback Plan,</li> <li>• Draft Handback Transition Plan, or</li> <li>• Final Handback Transition Plan</li> </ul> as and when required by Section MR 501.2.1 and MR 501.2.2 of the Technical Provisions and <u>Sections 8.11.3 and 24.13</u> of the Agreement.	2	5 Business Days	A
<b>TP ATTACHMENT 500-1</b>						
15.2-10	Reference 1 – Public Appearance	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the Public Appearance section (Reference 1) of TP Attachment 500-1 of the Technical Provisions.	2	Repair response time (temporary or permanent) identified in TP Attachment 500-1	A
15.2-11	Reference 2 – Roadway Pavement	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the Roadway Pavement section (Reference 2) of TP Attachment 500-1 of the Technical Provisions.	2	Repair response time (temporary or permanent) identified in TP Attachment 500-1	A
15.2-12	Reference 3 – ADA Ramps, Sidewalks & Curbs	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the ADA Ramps, Sidewalks, and Curbs section (Reference 3) of TP Attachment 500-1 of the Technical Provisions.	2	Repair response time (temporary or permanent) identified in TP Attachment 500-1	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Non Compliance Points Per Breach or Failure	Cure Period	Assessment Category
15.2-13	<b>Reference 4 – Safety and Security</b>	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the Safety and Security section (Reference 4) of TP Attachment 500-1 of the Technical Provisions.	2	Repair response time (temporary or permanent) identified in TP Attachment 500-1	A
15.2-14	<b>Reference 5 – Structures</b>	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the Structures section (Reference 5) of TP Attachment 500-1 of the Technical Provisions.	3	Repair response time (temporary or permanent) identified in TP Attachment 500-1	A
15.2-15	<b>Reference 6 – Ponding, Flooding, Drainage and Slopes</b>	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the Ponding, Flooding, Drainage and Slopes section (Reference 6) of TP Attachment 500-1 of the Technical Provisions.	3	Repair response time (temporary or permanent) identified in TP Attachment 500-1	A

**EXHIBIT 16**

**PORTIONS OF BASIC CONFIGURATION  
REQUIRING PROPERTY ACQUISITIONS OUTSIDE SCHEMATIC ROW**

None.

## **EXHIBIT 17**

### **INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

#### **ADOT Authorized Representative(s)**

##### **All Matters:**

- Rob Samour
- Carmelo Acevedo

##### **Design:**

- Steve Mishler

##### **Construction:**

- Julie Gadsby



**Developer's Authorized Representative(s)**

Walter Lewis III, Project Director

Designees:

- Justin Nielson, Deputy Project Director – Business
- Paul Arnold, Construction
- Chris Deane, Segment Manager