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EXHIBIT 2

DEVELOPER'S PROPOSAL COMMITMENTS AND CLARIFICATIONS

EXHIBIT 2-1

**DEVELOPER'S SCHEMATIC DESIGN INCLUDING
ALTERNATIVE TECHNICAL CONCEPTS**

Developer's Schematic Design
05_RDWY_ROLLPLOT_PROPOSAL_01
05_RDWY_ROLLPLOT_PROPOSAL_02
05_RDWY_ROLLPLOT_PROPOSAL_03
05_RDWY_ROLLPLOT_PROPOSAL_04
05_RDWY_ROLLPLOT_PROPOSAL_05
05_RDWY_ROLLPLOT_PROPOSAL_06
05_RDWY_ROLLPLOT_PROPOSAL_07
05_RDWY_ROLLPLOT_PROPOSAL_08 (Rev 1)
05_RDWY_ROLLPLOT_PROPOSAL_09 (Rev 1)
Developer's Alternative Technical Concepts
ATC No. 01, and the terms and conditions thereof, set forth in ADOT's response letter dated June 2, 2021, which are hereby incorporated herein by reference.
ATC No. 03, and the terms and conditions thereof, set forth in ADOT's response letter dated April 13, 2021, which are hereby incorporated herein by reference.
ATC No. 04, and the terms and conditions thereof, set forth in ADOT's response letter dated April 13, 2021, which are hereby incorporated herein by reference.
ATC No. 05 Revised, and the terms and conditions thereof, set forth in ADOT's response letter dated June 4, 2021, which are hereby incorporated herein by reference.
ATC No. 06, and the terms and conditions thereof, set forth in ADOT's response letter dated April 21, 2021, which are hereby incorporated herein by reference.
ATC No. 08, and the terms and conditions thereof, set forth in ADOT's response letter dated April 21, 2021, which are hereby incorporated herein by reference.
Alternative Design Concepts (ADCs)
ADC No. 01 - Crossover lighting requirements. Refer to Section DR 460.3.4 of the Technical Provisions.
ADC No. 03 - Allowable skew angle at culvert extensions. Refer to Section DR 445.3.6.4.C of the Technical Provisions.
ADC No. 05 - Eliminate lining and slope tapered inlet for 84" culvert.
ADC No. 12 - Bumble Bee TI turnaround access. Refer to Table 462-1 of the Technical Provisions and 05 RDWY ROLLPLOT PROPOSAL 08 (Rev 1).
ADC No. 17 - North crossover reconfiguration. Refer to Section DR 460.3.3 of the Technical Provisions and 05 RDWY ROLLPLOT PROPOSAL 09 (Rev 1).

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EXHIBIT 2-2

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PRELIMINARY PROJECT BASELINE SCHEDULE

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Developer's Preliminary Project Baseline Schedule set forth in Technical Proposal Appendix 1-C:

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Preliminary Project Baseline Schedule, which is incorporated herein by reference.

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EXHIBIT 2-3

PROPOSAL COMMITMENTS

Item	Topic	Reference	Commitment
1.	Drainage Design	Volume I – Technical Proposal G. Drainage d) Minimizing Maintenance of Drainage Features (Pg. i-30)	Use slope-tapered inlets and smooth wall lining of existing CMP culverts to use more existing infrastructure and reduce additional new infrastructure that would require maintenance.
2.	Drainage Design	Volume I – Technical Proposal i. Technical Approach G. Drainage d) Minimizing Maintenance of Drainage Features (Pg. i-30)	Provide a design without detention facilities.
3.	Project Delivery Approach	Volume I – Technical Proposal ii. Project Delivery Approach A. Preliminary Project Management Plan – Project Administration Chapter a) Methods of Communication and Documentation Project Meetings (Pg. ii-2)	Distribute an agenda ahead of the meeting, take meeting minutes, and assign and track completion of Action Items, as shown in Exhibit 2.
4.	Project Delivery Approach	Volume I – Technical Proposal ii. Project Delivery Approach A. Preliminary Project Management Plan – Project Administration Chapter b) Resources, Coordination, Interface, and Compliance b.ii. Subcontractor Control & Coordination (Pg. ii-3)	Subcontractors will be held to the same accountability standards as the rest of the KFJV team and required to follow the same processes and procedures.

Item	Topic	Reference	Commitment
5.	Project Delivery Approach	Volume I – Technical Proposal ii. Project Delivery Approach A. Preliminary Project Management Plan – Project Administration Chapter b) Resources, Coordination, Interface, and Compliance b.iii. Interface with ADOT, its Consultants, and Relevant Agencies (Pg. ii-3 to ii-4)	Partner with ADOT to develop a “zipper plan” that identifies KFJV counterparts to facilitate interface at all levels, as shown in Exhibit 4.
6.	Quality Management Approach	Volume I – Technical Proposal iii. Quality Management Approach A. Preliminary Quality Management Plan b) Quality Management Roles and Responsibilities Interdisciplinary and Constructability Reviews (Pg. iii-3)	PSQMP shall include formal interdisciplinary and constructability reviews during design progression prior to quality certification and submittal.
7.	PSQMP Quality Management Approach	Volume I – Technical Proposal iii. Quality Management Approach B. Professional Services Quality Management Approach a) Understanding and Approach to professional Services Quality Management PSQMP Implementation (Pg. iii-5)	Every person on the design team will be trained on how to properly implement the PSQMP prior to beginning work, and additional training sessions will be held, as necessary, to respond to changing conditions and requirements.
8.	PSQMP Quality Management Approach	Volume I – Technical Proposal iii. Quality Management Approach B. Professional Services Quality Management Approach a) Understanding and Approach to professional Services Quality Management PSQMP Implementation (Pg. iii-5)	Developer’s baseline schedule will include specific design quality activities, such as detailed checks, interdisciplinary and constructability reviews, and quality audits, for each design submittal at every stage, included as part of our scheduling process.

Item	Topic	Reference	Commitment
9.	Design Quality Control Checks and Reviews	Volume I – Technical Proposal iii. Quality Management Approach B. Professional Services Quality Management Approach a) Understanding and Approach to professional Services Quality Management Design Quality Control Checks and Reviews (Pg. iii-5)	Each discipline lead will be responsible for issuing design directives that clearly communicate decisions and direction received throughout the design development process to provide consistency among segments.
10.	Bridge Widenings	Volume I – Technical Proposal Appendix i-A: Technical Drawings or Proposer's Schematic Design, Graphics, Data, and Visual Animation Bridges and Structures I-17 NB Over Moores Gulch and Little Squaw Creek	Use of Steel Girders for widening of NB Moores Gulch Bridge and NB Little Squaw Creek Bridge.
11.	Maintenance of Traffic	Volume I – Technical Proposal i. Technical Approach F. Bridges and Structures d) Bridges and Surface Structures - Narrative d.ii. Sequencing and Phasing Exhibit 17 (Pg. i-26)	Use of Flex Lanes to maintain northbound traffic during bridge deck replacement.
12.	Roadway	Volume I – Technical Proposal i. Technical Approach E. Roadway b) Roadway Shifting the Horizontal Roadway Alignment to the Outside (Pg. i-21)	Shift the SB I-17 horizontal roadway alignment to the outside in the Cape Horn area.
13.	Bridges and Structures	Volume I – Technical Proposal i. Technical Approach F. Bridges and Structures d) Bridges and Surface Structures - Narrative d.ii. Sequencing and Phasing Exhibit 17 (Pg. i-26)	Widen one side of NB Little Squaw Creek Bridge.

Item	Topic	Reference	Commitment
14.	Safety	Volume I – Technical Proposal ii. Project Delivery Approach D. Preliminary Safety Management Plan b) Implementation Strategy 2. Safety During Construction Exhibit 3 (Pg. ii-3)	Stop-work authority to all staff and craft if they spot unsafe conditions. Safety plan will prioritize a culture of safety.
15.	Safety	Volume I – Technical Proposal ii. Project Delivery Approach D. Preliminary Safety Management Plan b) Implementation Strategy 2. Safety During Construction Exhibit 4 (Pg. ii-5)	Hold safety-specific meetings to address safety metrics, tracking, reporting, and corrective action.
16.	Quality Management	Volume I – Technical Proposal iii. Quality Management Approach C. Construction Quality Management Approach a) Understanding and Approach to Construction Quality Management Exhibit 4 (Pg. iii-8)	Developer's processes will be used by construction quality personnel to minimize nonconformance during construction.

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EXHIBIT 2-4
PRICING TABLES

Exhibit 2-4.1	D&C Price Breakdown
Exhibit 2-4.2	O&M Price Breakdown

EXHIBIT 2-4.1

D&C PRICE BREAKDOWN

ITEM / LINE NO.	DESCRIPTION**	Price (USD)*
A	NTP 1 Work Effort	
1	Project Management Plan (PMP)	
1a	Project Administration	\$400,000
1b	QMP General Requirements	\$200,000
1c	Professional Services Quality Management Plan	\$300,000
1d	Construction Quality Management Plan	\$300,000
1e	Environmental Management Plan	\$200,000
1f	Reputation Management Plan and Crisis Communications Plan	\$200,000
1g	Safety Management Plan	\$200,000
2	Transportation Management Plan (TMP)	\$500,000
3	Collocation Office Elements	
3a	Initial Core Office Lease & Equipment	\$1,000,000
3b	Collocated Office Layout Plan; Field Office Layout Plan	\$50,000
3c	Network Administration Plan & Setup	\$200,000
4	Existing Conditions Site Documentation	\$300,000
5	Project Baseline Schedule	\$500,000
6	Basis of Design Report	\$200,000
7	Segment Limits Map	\$50,000
8	Design Submittal Schedule	\$50,000
9	DBE Utilization Plan	\$300,000
10	OJT Utilization Plan	\$200,000
11	Enter portions of the Project ROW that ADOT owns, or is in possession of, to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations	\$500,000
12	Utility Coordination Plan	\$100,000
13	ITS Inventory and Sign Inventory	\$100,000
14	Plant Inventory	\$100,000
15	Vehicle Project Logo	\$50,000
16	Pre-NTP 2 Design Work	\$4,000,000
17	Subtotal (Sum Lines 1 through 16)	\$10,000,000
18	NTP 1 mobilization to the extent payable per <u>Section 15.2.9(b)(i)</u> of the Agreement	\$750,000
19	D&C bond and insurance premiums to the extent payable per <u>Section 15.2.9(c)</u> of the Agreement	\$2,291,000

ITEM / LINE NO.	DESCRIPTION**	Price (USD)*	
20	Subtotal Price Items (Sum Lines 17 + 18 + 19)	Subtotal "A"	\$13,041,000

B	Professional Services	Total	
21	Professional Services Development Management		\$2,699,500
22	Project Design, Design Survey, Site Investigation		\$21,673,000
23	Environmental Permitting		\$48,000
24	Utility Locates, Utility Survey, and Utility Adjustment Design		\$524,000
25	Community Outreach, Public Involvement		\$345,000
26	Miscellaneous Professional Services not covered Lines 21-25		\$1,233,000
27	Subtotal Professional Services (Sum Lines 21 through 26)	Subtotal "B"	\$26,522,500

C	Construction	Total	
28	Construction Development Management		\$15,691,000
29	Mobilization (Not including NTP 1 Work)		\$16,448,000
30	Traffic Control & Management		\$17,393,000
31	Roadway		\$153,286,000
32	Bridges		\$29,213,000
33	Walls and Noise Barriers		\$9,036,000
34	Roadway Lighting		\$7,017,000
35	Signing		\$2,194,000
36	Drainage		\$23,788,000
37	FMS and Flex Lanes Systems		\$27,946,000
38	Landscape		\$7,813,000
39	Environmental Mitigation		\$1,764,000
40	Utility Adjustments		\$550,000
41	D&C Bond Premiums not covered by Line 19		\$1,398,000
42	O&M Bond Premiums		\$22,000
43	Insurance Premiums not covered by Line 19		\$7,929,000
44	Miscellaneous Construction Items not covered by Lines 28-43		\$1,026,000
45	Subtotal Construction (Sum Lines 28 through 44)	Subtotal "C"	\$322,514,000
46	D&C Price (Line 20 + Line 27 + Line 45)	Total	\$362,077,500

ITEM / LINE NO.	DESCRIPTION**	Price (USD)*
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- 1 Note: Amounts are in nominal dollars.
- 2 Note: Developer shall bear the risk that its actual cost incurred prior to NTP 2 for a line item under NTP 1 Work
- 3 Effort exceeds the line item amount.

EXHIBIT 2-4.2

O&M PRICE BREAKDOWN

Year of O&M Period A	Maintenance of Flex Lanes System B	Non-Routine Maintenance C	Other Maintenance D	Operations of Flex Lanes E	Insurance F	Other Administrative Costs G	Total O&M Price H = B + C + D + E + F + G
1	\$259,468	\$33,000	\$78,375	\$169,645	\$19,500	\$93,127	\$653,115
2	\$279,346	\$36,383	\$86,408	\$187,034	\$21,499	\$79,061	\$689,731
3	\$305,640	\$40,112	\$95,265	\$206,205	\$23,702	\$66,050	\$736,974
TOTAL	\$844,454	\$109,495	\$260,048	\$562,884	\$64,701	\$238,238	\$2,079,820

Note: All amounts are in year 2021 \$.

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EXHIBIT 2-5

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EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

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4 See each Form R from Proposal, incorporated herein by reference.

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EXHIBIT 2-6

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DBE ASSURANCE & PROJECT GOAL DECLARATION

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4 See Form H-1 from Proposal, incorporated herein by reference.

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EXHIBIT 2-7

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BUY AMERICA CERTIFICATION

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4 See Form U from Proposal, incorporated herein by reference.

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EXHIBIT 2-8

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CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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4 See each Form S from Proposal, incorporated herein by reference.

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EXHIBIT 2-9

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS**

See Form T from Proposal, incorporated herein by reference.

EXHIBIT 3

LIST OF REFERENCE INFORMATION DOCUMENTS

No.	File Name	Date Added to RIDs
01 Environmental		
1	I-17 Anthem to SR69 - ADOT Noise Abatement Requirements - 20170500.pdf	2/13/20
2	I-17 Anthem to SR69 – ADOT Noise Model.zip	4/17/20
3	I-17 Anthem to SR69 - ADOT Post Construction Best Management Practices Manual for Water Quality - 20160100.pdf	2/13/20
4	I-17 Anthem to SR69 - ADOT Statewide Stormwater Discharge Permit - 20150817.pdf	2/13/20
5	I-17 Anthem to SR69 - Arizona Pollution Discharge Elimination System Fact Sheet - 20150700.pdf	2/13/20
6	I-17 Anthem to SR69 - Asbestos and Lead-based Paint Sampling and Analysis - 20180403.pdf	2/13/20
7	I-17 Anthem to SR69 - Biological Reevaluation - 20180730.pdf	2/13/20
11	I-17 Anthem to SR69 - Final Noise Report - 20180509.pdf	2/13/20
12	I-17 Anthem to SR69 - Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects – 20140922.pdf	2/18/20
13	I-17 Anthem to SR69 - Lead-based paint and asbestos detections -20180403.pdf	2/13/20
15	I-17 Anthem to SR69 - National Standards for Hazardous Air Pollutants Notification – 2015.pdf	2/18/20
16	I-17 Anthem to SR69 - Preliminary Initial Site Assessment - 20180403.pdf	2/13/20
17	I-17 Anthem to SR69 – Preliminary JD Files <ul style="list-style-type: none">a. I-17 Anthem to SR69 - Army Corp Approved PJD GIS Files – 20200414.zipb. I-17 Anthem to SR69 - Army Corp Approved PJD – 20200414.kmzc. I-17 Anthem to SR69 - Army Corp Signed PJD Approval Letter – 20200414.pdfd. I-17 Anthem to SR69 - Pre-JD Appendix 1 Request for Corps JD - 20190510.pdfe. I-17 Anthem to SR69 - Pre-JD Appendix 2 Pre JD Form - 20190510.pdff. I-17 Anthem to SR69 - Pre-JD Aquatic Resources Upload Sheet - 20190510.xlsmg. I-17 Anthem to SR69 - Pre-JD Map - 20190510.kmzh. I-17 Anthem to SR69 - Pre-JD Table of Aquatic Resources in Review Area - 20190510.pdf	<ul style="list-style-type: none">4/17/204/17/204/17/202/13/202/13/202/13/202/13/202/13/20

No.	File Name	Date Added to RIDs
	i. I-17 Anthem to SR69 - Pre-JD Transmittal Letter - 20190510.pdf	2/13/20
18	I-17 Anthem to SR69 - Preliminary Initial Site Assessment - 20180403.pdf	2/13/20
19	I-17 Anthem to SR69 - Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act.pdf	2/13/20
20	I-17 Anthem to SR69 - Project Level CO Hot-Spot Analysis Questionnaire - 20180626.pdf	2/13/20
21	I-17 Anthem to SR69 - Project Level PM Quantitative Hot-Spot Analysis - 20180626.pdf	2/13/20
22	I-17 Anthem to SR69 - Sample Compliance Evaluation Report.pdf	2/18/20
23	I-17 Anthem to SR69 - Sonoran Desert Tortoise Awareness Program Handout – 20170302.pdf	2/18/20
24	I-17 Anthem to SR69 - Sonoran Desert Tortoise Observation Form.pdf	2/18/20
25	I-17 Anthem to SR69 - Suitable Sonoran Desert Tortoise Habitat GIS Files	4/17/20
26	I-17 Anthem to SR69 - USACE Instructions for Preparing Mitigation Ratio Setting Checklist.pdf	2/13/20
27	I-17 Anthem to SR69 - USACE Mitigation Ratio Setting Checklist.pdf	2/13/20
28	I-17 Anthem to SR69 - Visual Assessment - 20181101.pdf	2/13/20
31	I-17 Anthem to SR69 – RGP No 96 Preconstruction Notification Form.docx	5/18/21
32	I-17 Anthem to SR69 – RGP No 96 Routine Transportation Activities Arizona.pdf	5/18/21
33	I-17 Anthem to SR69 – Final Categorical Exclusion Checklist - 20210526	5/27/21
34	I-17 Anthem to SR69 – AJD Signed – 20210609.pdf	6/9/21
35	I-17 Anthem to SR69 – AJD Maps – 20210609.pdf	6/9/21
36	I-17 Anthem to SR69 – Updated Env Sensitive Area Fencing – 20210708.pdf	7/15/21
37	I-17 Anthem to SR69 – CE Re-eval Coldwater TI Final 2021 Signed – 20210823	09/23/21
38	I-17 Anthem to SR69 – CE Checklist – Administrative Amendment – 2021018.pdf	10/21/21
02 Design		
1	I-17 Anthem to SR69 - AASHTO Construction Guidelines for Wildlife Fencing and Escape - 20150400.pdf	2/13/20
2	I-17 Anthem to SR69 - ADOT Bridge Load Rating Guidelines.pdf	2/13/20
3	I-17 Anthem to SR69 - ADOT Special Provisions for MSE Walls - 20130830.pdf	2/13/20
4	I-17 Anthem to SR69 - ADOT Standard Specifications for Road and Bridge Construction – 2008.pdf	2/18/20

No.	File Name	Date Added to RIDs
5	I-17 Anthem to SR69 - AGFD Guideline for Handling Sonoran Desert Tortoises Encountered on Development Projects - 20071000.pdf	2/13/20
6	I-17 Anthem to SR69 - AGFD Guidelines for Bridge Construction or Maintenance to Accommodate Fish and Wildlife Movement and Pass	2/13/20
7	I-17 Anthem to SR69 - AGFD Guidelines for Culvert Construction to Accommodate Fish and Wildlife Movement and Passage - 20061100	2/13/20
8	I-17 Anthem to SR69 - AGFD Guidelines for Wildlife Fencing – 20110100.pdf	2/18/20
9	I-17 Anthem to SR69 - AGFD Recommended Standard Mitigation Measures for Projects in Sonoran Desert Tortoise Habitat - 20080600.	2/13/20
10	I-17 Anthem to SR69 - ANSI American Standard for Nursery Stock - 20140414.pdf	2/13/20
11	I-17 Anthem to SR69 - Arizona Nursery Association Container Grown Tree Guide - 2017.pdf	2/13/20
12	I-17 Anthem to SR69 – Record Drawings	2/13/20 Updated: 4/23/21
13	I-17 Anthem to SR69 – Record Drawings Index.docx	2/13/20 Updated: 4/23/21
14	I-17 Anthem to SR69 - AWS Bridge Welding Code D1.5 - 20151100.pdf	2/13/20
15	I-17 Anthem to SR69 - AWS Welding Code D1.1 - 20150728.pdf	2/13/20
16	I-17 Anthem to SR69 - Bumble Bee TI NB Cross Sections.pdf	3/23/20
17	I-17 Anthem to SR69 - Bumble Bee TI NB Stage II Plan Set.pdf	3/23/20
18	I-17 Anthem to SR69 - DCR CAD and Inroads Files -20190430	2/13/20
19	I-17 Anthem to SR69 - FHWA Design of MSE Walls and Reinforced Soil Slopes - 20091100.pdf	2/13/20
20	I-17 Anthem to SR69 - FHWA Design Exception Approval Letter – 20200130.pdf	4/17/20
21	I-17 Anthem to SR69 - FHWA Design Variances Letter to ADOT – 20191211.pdf	2/18/20
22	I-17 Anthem to SR69 - FHWA Wildlife Crossing Structures Handbook - 20110300.pdf	2/13/20
23	I-17 Anthem to SR69 - Final DCR Basemap - 20190430.kmz	2/13/20
24	I-17 Anthem to SR69 - Final DCR Sealed - 20190430.pdf	2/13/20
25	I-17 Anthem to SR69 - Moores Gulch SB Bridge Replacement	2/18/20
26	Schematic Design Maps.pdf	2/14/20
27	I-17 Anthem to SR69 - ADOT Safety Hardware Allowed To Remain In Place.pdf	12/3/20
28	I-17 Anthem to SR69 - GEC Updated KMZ – 20201201.kmz	12/3/20

No.	File Name	Date Added to RIDs
29	I-17 Anthem to SR69 - Schematic Design Maps rev. 1 – 20201122.pdf	12/3/20
30	I-17 Anthem and SR69 - Bridge As-Built and Inspection Reports <ul style="list-style-type: none"> a. Str 00339 Moores Gulch SB Bridge b. Str 00764 Coldwater Canyon TI NB Bridge c. Str 00765 Coldwater Canyon TI SB Bridge d. Str 00967 Moores Gulch NB Bridge e. Str 00968 Little Squaw Creek NB Bridge f. Str 01170 Bumble Bee TI SB Bridge g. Str 01171 Bumble Bee TI NB Bridge h. Str 01290 New River NB Bridge i. Str 01291 New River SB Bridge j. Str 01292 New River TI NB Bridge k. Str 01293 New River TI SB Bridge l. Str 01807 Agua Fria River NB Bridge m. Str 01808 Agua Fria River SB Bridge n. Str 02965 Little Squaw Creek SB Bridge o. Str 01237 Sunset Point NB Bridge p. Str 01352 Sunset Point SB Bridge 	1/21/21 Updated: 4/23/21 5/27/21
31	I-17 Anthem to SR69 – Point Cloud Data – 2017	3/11/21
32	I-17 Anthem to SR69 – ADOT Broadband Initiative for I-17 Plans - 20210513	5/13/21
33	I-17 Anthem to SR69 – Schematic Design Map rev. 2 – 20210609.kmz	6/9/21 Update: 6/14/21
34	I-17 Anthem to SR69 - Schematic Design Maps rev. 2 – 20210609.pdf	6/9/21
35	I-17 Anthem to SR69 – New ROW - 20210609	6/9/21
36	I-17 Anthem to SR69 - ADOT Standard Specifications for Road and Bridge Construction – 2021.pdf	6/25/21
37	I-17 Anthem to SR69 – ADOT Broadband Initiative for I-17 Map – 20210505.kmz	6/25/21
38	I-17 Anthem to SR69 – ADOT Broadband Initiative for I-17 – 20210820 <ul style="list-style-type: none"> • F0429 - Plans - Segment 1B&2 (Rev 08-20-21).pdf • F0429 - Quantities - Section 1B & 2 (Rev 08-20-21).pdf • F042901C_Special Provisions.pdf 	10/26/21
03 Geotechnical		
1	I-17 Anthem to SR69 - Black Canyon Hill Geotech Report – 20080821.pdf	2/18/20
2	I-17 Anthem to SR69 - Example Drilled Shaft Excavation Form.pdf	2/13/20
3	I-17 Anthem to SR69 - Example Drilled Shafts Pre-Cage Set Form.pdf	2/13/20
4	I-17 Anthem to SR69 - Example Drilled Shafts Pre-Concrete Placement Form.pdf	2/13/20
5	I-17 Anthem to SR69 - Example Drilled Shaft Report.pdf	2/13/20

No.	File Name	Date Added to RIDs
6	I-17 Anthem to SR69 - FHWA Rockfall Catchment Area Design Guide - 20011200.pdf	2/13/20
7	I-17 Anthem to SR69 - Moores Gulch Geotech Report – 20160222.pdf	2/18/20
8	I-17 Anthem to SR69 - Preliminary Geotechnical and Foundation Investigation Report - 20190430.pdf	2/13/20
9	I-17 Anthem to SR69 - Preliminary Pavement Design Summary and Materials Design Memorandum - 20190501.pdf	2/13/20
10	I-17 Anthem to SR69 - Geophysical Investigation Landslides SOW.pdf	12/3/20
11	I-17 Anthem to SR69 – Inclinator Data - 20210107	1/21/21
12	I-17 Anthem to SR69 - Preliminary Geophysical Survey Map.kmz	5/18/21
13	I-17 Anthem to SR69 - Preliminary Geophysical Survey Data – 20210508.pdf	5/18/21
14	I-17 Anthem to SR69 – ADOT Geotechnical Project Development Manual v1.0 – 202105.pdf	6/9/21
15	I-17 Anthem to SR69 - Geophysical Evaluation Project Landslides - 20210916	10/20/21
04 Utilities		
1	I-17 Anthem to SR69 - ADOT Standard Utility Agreement - 20130212.pdf	2/13/20
2	I-17 Anthem to SR69 - ADOT Utility Coordination Guide - 20091231.pdf	2/13/20
3	I-17 Anthem to SR69 - ADOT Utility Report Template.xlt	2/18/20
4	I-17 Anthem to SR69 – El Paso Natural Gas Files <ul style="list-style-type: none"> a. I-17 Anthem to SR69 - EPNG L1203 3 Crossings – 20200414.zip b. I-17 Anthem to SR69 - EPNG Ln. 01203 MP 81-82 – 20200414.kmz c. I-17 Anthem to SR69 - EPNG Ln. 01203 MP 86 – 20200414.kmz d. I-17 Anthem to SR69 - EPNG Ln. 01203 MP 89-91 – 20200414.kmz e. I-17 Anthem to SR69 - EPNG Ln. 01203 Vicinity Map – 20200414.pdf 	4/17/20 4/17/20 4/17/20 4/17/20 4/17/20
5	I-17 Anthem to SR69 - Guidelines for Accommodating Utilities on Highway ROW – 20150900.pdf	2/18/20
6	I-17 Anthem to SR69 - Permit Log – 20190920.pdf	2/18/20
7	I-17 Anthem to SR69 - Sample ACC Signed Application - 20110222.pdf	2/13/20
8	I-17 Anthem to SR69 - Sample Request for Prior Rights Determination.docx	2/18/20
9	I-17 Anthem to SR69 - Sample Utility Conflict Matrix.docx	2/18/20
10	I-17 Anthem to SR69 – ADOT Standard Payable Utility Agreement Template – 20200430.pdf	5/13/21

No.	File Name	Date Added to RIDs
11	I-17 Anthem to SR69 – ADOT Standard Receivable Utility Agreement Template – 20200430.pdf	5/13/21
12	I-17 Anthem to SR69 – Sample APS Service POD Agreement – 20181106.pdf	5/13/21
13	I-17 Anthem to SR69 - WAPA Information Sheet License Agreement Application – 20200326.pdf	6/22/21
05 Drainage		
1	I-17 Anthem to SR69 - Initial Drainage Report - 20181001.pdf	2/13/20
2	I-17 Anthem to SR69 – Agua Fria Effective Model - 2021	3/11/21
3	I-17 Anthem to SR69 – Deadman Wash Effective Model - 2021	4/23/21
4	I-17 Anthem to SR69 – Moores Gulch and Little Squaw Creek Effective Model - 2021	4/23/21
5	I-17 Anthem to SR69 – New River Effective Model - 2021	4/23/21
6	I-17 Anthem to SR69 – Moores Gulch SB Bridge Hydraulic Report <ul style="list-style-type: none"> • Bridge Hydraulic Report – July 2015.pdf • HEC-1.zip • HEC-RAS.zip 	10/20/21
06 Survey		
1	I-17 Anthem to SR69 – Survey Data	12/3/20
07 Traffic		
1	I-17 Anthem to SR69 - 2009 Arizona Supplement to MUTCD as revised - 20120100.pdf	2/13/20
2	I-17 Anthem to SR69 - 2009 Manual on Uniform Traffic Control Devices as revised - 20120500.pdf	2/13/20
3	I-17 Anthem to SR69 - ADOT Road Closure Guidelines Phoenix Region - 20150807.pdf	2/13/20
4	I-17 Anthem to SR69 - ADOT Systems Engineering Checklist – 20190329.pdf	2/18/20
5	I-17 Anthem to SR69 - Preliminary Traffic Report - 20171001.pdf	2/13/20
6	I-17 Anthem to SR69 - Sample Light Pole Tag 01 - 20150300.pdf	2/13/20
7	I-17 Anthem to SR69 - Sample Light Pole Tag 02 - 20150300.pdf	2/13/20
8	I-17 Anthem to SR69 - Sample Light Pole Tag 03 - 20150300.pdf	2/13/20
9	I-17 Anthem to SR69 – Draft Concept of Operations - 20210518	5/19/21
10	I-17 Anthem to SR69 – TP Attachment 460-1 Flex Lanes Guide Sign Format - 20210519	5/19/21

No.	File Name	Date Added to RIDs
11	I-17 Anthem to SR69 – MAG Travel Demand Models <ul style="list-style-type: none"> 2040_I-17_loaded_network_truck.zip 2040_I-17_nobuild_truck.zip 	6/22/21
08 Third-party As-builts		
	None	N/A
09 3rd Party Information		
	None	N/A
10 Agreements		
	None	N/A
11 Right of Way		
1	I-17 Anthem to SR69 - ADOT ROW Plans	10/26/21
2	I-17 Anthem to SR69 - ADOT Right of Way Procedures Manual - 20180719.pdf	2/13/20
3	I-17 Anthem to SR69 - Asbestos Project Clearance Letter - 20150303.pdf	2/13/20
4	I-17 Anthem to SR69 - BLM Discussion Items – 20200219.pdf	4/17/20
5	I-17 Anthem to SR69 - FHWA Final Rule on Uniform Act 49 CFR Part 24 - 20050104.pdf	2/13/20
6	I-17 Anthem to SR69 - Uniform Act 42 USC Chapter 61.pdf	2/13/20
7	I-17 Anthem to SR69 - Revised ROW - 20201022	12/3/20
12 Miscellaneous		
1	I-17 Anthem to SR69 - ADOT BECO DBE Good Faith Efforts Guide - 20141100.pdf	2/13/20
2	I-17 Anthem to SR69 – ADOT FHWA BLM MOU re Arizona Land Management – 20030423.pdf	3/23/20
3	I-17 Anthem to SR69 – ADOT Parcel in Black Canyon City.pdf	3/23/20
4	I-17 Anthem to SR69 - ADOT Site Specific Safety Plan Review Checklist - 20150300.pdf	2/13/20
5	I-17 Anthem to SR69 - Aerials	2/13/20
6	I-17 Anthem to SR69 - BLM Federal Land Policy and Management Act - 2016.pdf	3/23/20
7	I-17 Anthem to SR69 - BLM Land Use Application and Permit 2920-001_4.pdf	3/23/20
8	I-17 Anthem to SR69 - CRA Project Overview - 20190627.pdf	2/13/20
9	I-17 Anthem to SR69 - DCR Overview - 20190626.pdf	2/13/20
10	I-17 Anthem to SR69 - Design Build Projects 23 CFR 710.313 - 20100400.pdf	2/13/20

No.	File Name	Date Added to RIDs
11	I-17 Anthem to SR69 - FHWA Road Safety Audit Guidelines - 2006.pdf	2/13/20
12	I-17 Anthem to SR69 - Guidelines for Highways on Bureau of Land Management and US Forest Service Lands – 2008.pdf	2/18/20
13	I-17 Anthem to SR69 - INFRA Grant Application - 20190304.pdf	2/13/20
14	I-17 Anthem to SR69 - Landscape Inventory config.xlsx	2/13/20
15	I-17 Anthem to SR69 - Roadway Inventory config.xlsx	2/13/20
16	I-17 Anthem to SR69 - Signing Inventory config.xlsx	2/13/20
17	I-17 Anthem to SR69 - Visual Assessment - 20181200.pdf	2/13/20
18	I-17 Anthem to SR69 - ADOT Graphics and Editorial Standards Guide - 202007	12/3/20
19	I-17 Anthem to SR69 - ADOT Graphics and Editorial Standards Guide - 20210223	3/11/21
20	I-17 Anthem to SR69 – ADOT & USACE MOU – 20170920.pdf	2/9/21
21	I-17 Anthem to SR69 – ADOT Public Involvement Plan – 201702.pdf	2/9/21
22	I-17 Anthem to SR69 – AZ AGC Mineral Rights Unit Cost Estimate – 20120215.pdf	6/25/21
23	I-17 Anthem to SR69 – Project PIP – 20210707.pdf	7/15/21
13 Cultural (access restricted to certified cultural specialist)		
1	I-17 Anthem to SR69 – Cultural CAD Files	4/17/20
2	I-17 Anthem to SR69 – Cultural Shapefiles	4/17/20
3	I-17 Anthem to SR69 – Cultural Sites Map.kmz	4/17/20
4	I-17 Anthem to SR69 – Data Recovery in Treatment Plan Map – 20210712.kmz	7/15/21
5	I-17 Anthem to SR69 – Historic Properties Treatment Plan – 20210721.pdf	10/20/21

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1 **ATTACHMENT 1 TO EXHIBIT 4**

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

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

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

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

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

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

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

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

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

33 NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts
34 except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as
35 a condition precedent to approval by the Federal Highway Administrator of the contract for this work that
36 each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or
37 corporation to whom such contract is to be awarded, certifying that such person, firm, association, or
38 corporation has not, either directly or indirectly, entered into any agreement, participated in any

1 collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the
2 submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a
3 certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec.
4 1746, is included in the Proposal.

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

9 CONVICT PRODUCED MATERIALS

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

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

18 ACCESS TO RECORDS

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

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

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ATTACHMENT 2 TO EXHIBIT 4

2

FHWA FORM 1273

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[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
- 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. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying

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).

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

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 Journeyman 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, OJT 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, OJT 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 OJT Trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of OJT Trainee programs, the registration of the apprentices and OJT 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 OJT 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 OJT 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 Journeymen 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, OJT 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 OJT Trainees to Journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every OJT Trainee must be paid at not less than the rate specified in the approved program for the OJT 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 OJT Trainee program. If the OJT Trainee program does not mention fringe benefits, OJT 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 OJT 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 OJT 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 OJT 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, OJT 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 OJT 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 OJT Trainees under such programs will be established by the particular programs. The ratio of apprentices and OJT 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 contacting 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 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.

* * * * *

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.

* * * * *

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.

* * * * *

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: AZ20210008 01/01/2021

Superseded General Decision Number: AZ20200008

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma
Counties in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was 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 \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
0 01/01/2021

CARP0408-005 07/01/2019

	Rates	Fringes
CARPENTER (Including Cement Form Work)	\$ 28.08	12.74

* ENG10428-001 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1.....	\$ 27.04	11.72
Group 2.....	\$ 30.31	11.72
Group 3.....	\$ 31.39	11.72
Group 4.....	\$ 32.42	11.72

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 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 08/01/2019

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

	Rates	Fringes
Ironworker, Rebar	\$ 27.80	19.05

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

* LABO1184-008 06/01/2020

	Rates	Fringes
Laborers:		
Group 1	\$ 20.93	6.06
Group 2	\$ 20.93	6.06
Group 3	\$ 21.63	6.06
Group 4	\$ 22.57	6.06
Group 5	\$ 23.43	6.06

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.

 PAIN0086-001 04/01/2017

	Rates	Fringes
PAINTER		
PAINTER (Yavapai County only), SAND BLASTER/WATER BLASTER (all Counties)	\$ 19.58	6.40
ZONE PAY: More than 100 miles from Old Phoenix Courthouse \$3.50 additional per hour.		

 SUAZ2009-001 04/20/2009

	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

1	Flagger		
2	Coconino, Mohave, Pima,		
3	Pinal, Yavapai & Yuma	\$ 12.35	1.59
4	Formsetter	\$ 16.09	3.97
5	General/Cleanup Laborer		
6	Coconino, Maricopa,		
7	Mohave, Pima, Yavapai &		
8	Yuma	\$ 14.54	3.49
9	Grade Setter (Pipeline)	\$ 17.83	5.45
10	Guard Rail Installer	\$ 13.28	2.99
11	Landscape Laborer.....	\$ 11.39	
12	Landscape Sprinkler		
13	Installer	\$ 15.27	
14	Pipelayer.....	\$ 14.81	2.96
15	Powderman, Hydrasonic.....	\$ 16.39	2.58
16			
17	OPERATOR: Power Equipment		
18	Asphalt Laydown Machine.....	\$ 21.19	6.05
19	Backhoe < 1 cu yd		
20	Coconino, Mohave, Pima,		
21	Pinal, Yavapai & Yuma	\$ 17.37	3.85
22	Backhoe < 10 cu yd		
23	Coconino, Mohave, Pima,		
24	Pinal, Yavapai & Yuma	\$ 18.72	3.59
25	Clamshell < 10 cu yd		
26	Coconino, Mohave, Pima,		
27	Pinal, Yavapai & Yuma	\$ 18.72	3.59
28	Concrete Pump (Truck		
29	Mounted with boom only)		
30	Coconino, Mohave, Pima,		
31	Pinal, Yavapai & Yuma	\$ 19.92	7.10
32	Crane (under 15 tons).....	\$ 21.35	7.36
33	Dragline (up to 10 cu yd)		
34	Coconino, Mohave, Pima,		
35	Pinal, Yavapai & Yuma	\$ 18.72	3.59
36	Drilling Machine		
37	(including Water Wells).....	\$ 20.58	5.65
38	Grade Checker		
39	Coconino, Mohave, Pima,		
40	Pinal, Yavapai & Yuma	\$ 16.04	3.68
41	Hydrographic Seeder	\$ 15.88	7.67
42	Mass Excavator	\$ 20.97	4.28

1	Milling Machine/Rotomill	\$ 21.42	7.45
2	Motor Grader (Finish-any		
3	type power blade)		
4	Coconino, Mohave, Pima,		
5	Pinal, Yavapai & Yuma	\$ 21.92	4.66
6	Motor Grader (Rough)		
7	Coconino, Mohave, Pima,		
8	Pinal, Yavapai & Yuma	\$ 20.07	4.13
9	Oiler	\$ 18.15	8.24
10	Power Sweeper.....	\$ 16.76	4.44
11	Roller (all types Asphalt)		
12	Coconino, Mohave, Pima,		
13	Pinal, Yavapai & Yuma	\$ 18.27	3.99
14	Roller (excluding asphalt)..	\$ 15.65....	3.32
15	Scraper (pneumatic tired)		
16	Coconino, Mohave, Pima,		
17	Pinal, Yavapai & Yuma	\$ 17.69	3.45
18	Screed		
19	Coconino, Mohave, Pima,		
20	Pinal, Yavapai & Yuma	\$ 17.54	3.72
21	Shovel < 10 cu yd		
22	Coconino, Mohave, Pima,		
23	Pinal, Yavapai & Yuma	\$ 18.72	3.59
24	Skip Loader (all types <3		
25	cu yd)	\$ 18.28	5.30
26	Skip Loader (all types 3 <		
27	6 cu yd)		
28	Coconino, Mohave, Pima,		
29	Pinal, Yavapai & Yuma	\$ 18.64	4.86
30	Skip Loader (all types 6 <		
31	10 cu yd)	\$ 20.15	4.52
32	Tractor (dozer, pusher -		
33	all)		
34	Coconino, Mohave, Pima,		
35	Pinal, Yavapai & Yuma	\$ 17.26	2.65
36			
37	PAINTER		
38	Coconino, Maricopa,		
39	Mohave, Pima, Pinal & Yuma.....	\$ 15.57	3.92
40			
41	TRUCK DRIVER		

1	2 or 3 Axle Dump or		
2	Flatrack	\$ 16.27	3.30
3	5 Axle Dump or Flatrack	\$ 13.97	2.89
4	6 Axle Dump or Flatrack (<		
5	16 cu yd)	\$ 17.79	6.42
6	Belly Dump	\$ 14.67	
7	Oil Tanker Bootman	\$ 22.03	
8	Self-Propelled Street		
9	Sweeper	\$ 13.11	5.48
10	Water Truck 2500 < 3900		
11	gallons	\$ 18.14	4.55
12	Water Truck 3900 gallons		
13	and over	\$ 15.92	3.33
14	Water Truck under 2500		
15	gallons	\$ 15.94	4.16

17 -----
18 WELDERS - Receive rate prescribed for craft performing operation to which
19 welding is incidental.
20

21 =====

23 Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal
24 Contractors applies to all contracts subject to the Davis-Bacon Act for which the
25 contract is awarded (and any solicitation was issued) on or after January 1, 2017. If
26 this contract is covered by the EO, the contractor must provide employees with 1
27 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick
28 leave each year. Employees must be permitted to use paid sick leave for their own
29 illness, injury or other health-related needs, including preventive care; to assist a
30 family member (or person who is like family to the employee) who is ill, injured, or
31 has other health-related needs, including preventive care; or for reasons resulting
32 from, or to assist a family member (or person who is like family to the employee)
33 who is a victim of, domestic violence, sexual assault, or stalking. Additional
34 information on contractor requirements and worker protections under the EO is
35 available at www.dol.gov/whd/govcontracts.

37 Unlisted classifications needed for work not included within the scope of the
38 classifications listed may be added after award only as provided in the labor
39 standards contract clauses (29CFR 5.5 (a) (1) (ii)).
40
41
42 -----

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

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.

1 Union Average Rate Identifiers

2
3 Classification(s) listed under the UAVG identifier indicate that no single majority
4 rate prevailed for those classifications; however, 100% of the data reported for
5 the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG
6 indicates that the rate is a weighted union average rate. OH indicates the state.
7 The next number, 0010 in the example, is an internal number used in producing
8 the wage determination. 08/29/2014 indicates the survey completion date for
9 the classifications and rates under that identifier.

10
11 A UAVG rate will be updated once a year, usually in January of each year, to reflect
12 a weighted average of the current negotiated/CBA rate of the union locals from
13 which the rate is based.

14
15
16 -----

17
18
19 WAGE DETERMINATION APPEALS PROCESS

20
21 1.) Has there been an initial decision in the matter? This can be:

- 22
23 * an existing published wage determination
24 * a survey underlying a wage determination
25 * a Wage and Hour Division letter setting forth a position on a wage
26 determination matter
27 * a conformance (additional classification and rate) ruling

28
29 On survey related matters, initial contact, including requests for summaries of
30 surveys, should be with the Wage and Hour Regional Office for the area in which
31 the survey was conducted because those Regional Offices have responsibility for
32 the Davis-Bacon survey program. If the response from this initial contact is not
33 satisfactory, then the process described in 2.) and 3.) should be followed.

34
35 With regard to any other matter not yet ripe for the formal process described
36 here, initial contact should be with the Branch of Construction Wage
37 Determinations. Write to:

38
39 Branch of Construction Wage Determinations
40 Wage and Hour Division
41 U.S. Department of Labor
42 200 Constitution Avenue, N.W.

1 Washington, DC 20210

2
3 2) If the answer to the question in 1.) is yes, then an interested party (those
4 affected by the action) can request review and reconsideration from the Wage and
5 Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

6
7 Wage and Hour Administrator
8 U.S. Department of Labor
9 200 Constitution Avenue, N.W.
10 Washington, DC 20210

11 The request should be accompanied by a full statement of the interested party's
12 position and by any information (wage payment data, project description, area
13 practice material, etc.) that the requestor considers relevant to the issue.

14
15 3) If the decision of the Administrator is not favorable, an interested party may
16 appeal directly to the Administrative Review Board (formerly the Wage Appeals
17 Board). Write to:

18
19 Administrative Review Board
20 U.S. Department of Labor
21 200 Constitution Avenue, N.W.
22 Washington, DC 20210

23
24 All decisions by the Administrative Review Board are final.

25
26
27 =====

28
29 END OF GENERAL DECISION
30

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; and
- 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

1 faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan
2 does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve
3 the Hometown Plan goals and timetables.

4 **4.** The contractor shall implement the specific affirmative action standards provided in paragraphs
5 7a through p of these specifications. The goals set forth in the solicitation from which this contract
6 resulted are expressed as percentages of the total hours of employment and training of minority and
7 female utilization the contractor should reasonably be able to achieve in each construction trade in which
8 it has employees in the covered area. Covered construction contractors performing contracts in
9 geographical areas where they do not have a Federal or federally assisted construction contract shall apply
10 the minority and female goals established for the geographical area where the contract is being
11 performed. Goals are published periodically in the Federal Register in notice form and such notices may
12 be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement
13 contracting officer. The contractor is expected to make substantially uniform progress toward its goals in
14 each craft during the period specified.

15 **5.** Neither the provisions of any collective bargaining agreement, nor the failure by a union with
16 whom the contractor has a collective bargaining agreement, to refer either minorities or women shall
17 excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations
18 promulgated pursuant thereto.

19 **6.** In order for the nonworking training hours of apprentices and OJT Trainees to be counted in
20 meeting the goals, such apprentices and OJT Trainees must be employed by the contractor during the
21 training period, and the contractor must have made a commitment to employ the apprentices and OJT
22 Trainees at the completion of their training, subject to the availability of employment opportunities.
23 Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

24 **7.** The contractor shall take specific affirmative actions to ensure equal employment opportunity.
25 The evaluation of the contractor's compliance with these specifications shall be based upon its effort to
26 achieve maximum results from its actions. The contractor shall document these efforts fully, and shall
27 implement affirmative action steps at least as extensive as the following:

28 a. Ensure and maintain a working environment free of harassment, intimidation, and coercion
29 at all sites, and in all facilities at which the contractor's employees are assigned to work. The
30 contractor, where possible, will assign two or more women to each construction project. The
31 contractor shall specifically ensure that all foremen, superintendents, and other on-site
32 supervisory personnel are aware of and carry out the contractor's obligation to maintain such
33 a working environment, with specific attention to minority or female individuals working at
34 such sites or in such facilities.

35 b. Establish and maintain a current list of minority and female recruitment sources, provide
36 written notification to minority and female recruitment sources and to community
37 organizations when the contractor or its unions have employment opportunities available,
38 and maintain a record of the organizations' responses.

39 c. Maintain a current file of the names, addresses and telephone numbers of each minority and
40 female off-the-street applicant and minority or female referral from a union, a recruitment
41 source or community organization and of what action was taken with respect to each such
42 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 OJT 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, OJT 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 OJT 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. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; 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

Borough or Other Geographic Area	Goals for Minority Participation	County
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

1 Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the
2 information.

3 5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-
4 discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the
5 Federal Highway Administration may determine to be appropriate, including, but not limited to:

6 a. withholding payments to the contractor under the contract until the contractor complies;
7 and/or

8 b. cancelling, terminating, or suspending a contract, in whole or in part.

9 6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through
10 six in every subcontract, including procurements of materials and leases of equipment, unless exempt by
11 the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with
12 respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may
13 direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if
14 the contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier
15 because of such direction, the contractor may request the Recipient to enter into any litigation to protect
16 the interests of the Recipient. In addition, the contractor may request the United States to enter into the
17 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;

1 • The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123)
2 (prohibits discrimination on the basis of race, color, national origin, and sex);

3 • Executive Order 12898, Federal Actions to Address Environmental Justice in Minority
4 Populations and Low-Income Populations, which ensures discrimination against minority populations by
5 discouraging programs, policies, and activities with disproportionately high and adverse human health or
6 environmental effects on minority and low-income populations;

7 • Executive Order 13166, Improving Access to Services for Persons with Limited English
8 Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because
9 of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to
10 - ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

11 • Title IX of the Education Amendments of 1972, as amended, which prohibits you from
12 discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

1 **ATTACHMENT 8 TO EXHIBIT 4**

2 **COMPLIANCE WITH FEDERAL IMMIGRATION LAWS**

3 Part A – General

4 In accordance with Arizona Executive Order 2005-30, Developer and all Subcontractors shall
5 comply with all State and federal laws applicable to immigration, including federal law and regulations
6 relating to the immigration status of their employees who perform services under the Agreement.

7 Developer shall include the provisions of this Attachment 8 to Exhibit 4 in all Subcontracts. In
8 addition, Developer shall: (1) require that all Subcontractors comply with the provisions of this
9 Attachment 8 to Exhibit 4; (2) monitor such Subcontractors' compliance; and (3) assist ADOT in any
10 compliance verification regarding any Subcontractor.

11 Part B – Compliance Requirements for A.R.S. § 41-4401, Government Procurement, E-Verify
12 Requirement; Warranties

13 Developer warrants that Developer and all Subcontractors are and shall remain in compliance
14 with:

15 (1) All State and federal laws applicable to immigration, including federal law and regulations
16 relating to the immigration status of their employees who perform services under the
17 Agreement; and

18 (2) ARS section 23-214, subsection A (which reads: "After December 31, 2007, every
19 employer, after hiring an employee, shall verify the employment eligibility of the
20 employee through the E-Verify program and shall keep a record of the verification for the
21 duration of the employee's employment or at least three years, whichever is longer.").

22 Part C – Compliance Verification

23 In accordance with Arizona Executive Order 2005-30, ADOT shall retain the legal right to, and may
24 at any time during the Term, inspect the papers of any employee of Developer or any Subcontractor who
25 works under the Agreement to ensure compliance with the warranties set forth in Part B, above.

26 If ADOT requests from Developer evidence of such compliance, Developer shall complete and
27 return to ADOT the State Contractor Employment Record Verification Form and Employee Verification
28 Worksheet (which ADOT will provide to Developer) no later than 21 days from Developer's receipt of such
29 request.

30 Listing of the compliance verification procedure described in this Part C shall not preclude ADOT
31 from utilizing other means to determine compliance with the warranties set forth in Part B, above.

32 Part D— Sanctions for Non-Compliance

33 For purposes of this Part D, non-compliance refers to either Developer's or any Subcontractor's
34 breach of the warranties set forth in Part B, above, or Developer's failure to comply with the compliance

1 verification procedure described in Part C, above. Such non-compliance shall be deemed a material breach
2 of the Agreement, subjecting Developer to the remedies set forth in this Part.

3 ADOT will reduce Developer's compensation under the Agreement for non-compliance as follows:

- 4 (1) \$10,000 for Developer's and any Subcontractor's first instance of non-compliance;
- 5 (2) \$10,000 for Developer's and any Subcontractor's subsequent non-compliance occurring
6 more than two years after the Developer's or the Subcontractor's, as applicable,
7 preceding non-compliance; and
- 8 (3) \$50,000 for Developer's or any Subcontractor's subsequent non-compliance occurring
9 less than two years after the Developer's or the Subcontractor's, as applicable, preceding
10 non-compliance.

11 If either Developer or any Subcontractor is in non-compliance more than three times within a
12 two-year period, then, in addition to the monetary sanctions set forth in this Part D, ADOT may apply
13 other remedies available under the Contract Documents, including the following:

- 14 (1) In the case of Developer, ADOT may (a) suspend the Work for cause in accordance with
15 Section 20.2.1(i) of the Agreement, (b) declare a Developer Default under Section 21.1.3
16 of the Agreement, and (c) if such Developer Default is not cured within the applicable cure
17 period, terminate the Agreement in accordance with Section 21.2.1 of the Agreement.
- 18 (2) In the case of any Subcontractor, ADOT may (a) suspend the Subcontractor's Work for
19 cause in accordance with Section 20.2.1(i) of the Agreement, and (b) require that
20 Developer terminate the corresponding Subcontract, in which case the Subcontractor will
21 be prohibited from participating in ADOT contracts for a minimum of one year after said
22 termination (and, if applicable, the Subcontractor's prequalification status with ADOT will
23 be revoked).

24 If ADOT exercises its right to terminate the Agreement or any Subcontract, as provided in this Part
25 D, then after the minimum one-year suspension period, the terminated party may be considered eligible
26 to participate in subsequent ADOT contracts, but only after successfully demonstrating, to the satisfaction
27 of ADOT, that the party's hiring practices comply with the requirements specified herein. If considered
28 eligible, the terminated party shall be required to apply or reapply, if applicable, for ADOT prequalification
29 and be accepted prior to bidding on ADOT contracts. For purposes of considering suspension from
30 participating in ADOT contracts: (1) non-compliance by a Subcontractor does not count as a violation by
31 Developer, and (2) ADOT will count instances of non-compliance on other ADOT contracts.

32 Developer and Subcontractors may appeal suspensions from participating in ADOT contracts to
33 the State Engineer. Appeals must be in writing and personally delivered or sent by certified mail, return
34 receipt requested, to the State Engineer. Appeals must be received by the State Engineer no later than
35 seven days after ADOT's determination. The State Engineer will promptly consider appeals and notify the
36 interested party of the State Engineer's findings and decision. The State Engineer's decision shall be
37 considered administratively final.

38 Any delay resulting from a compliance verification or exercise of a remedy under this Attachment
39 8 is a non-excusable delay. Accordingly, Developer shall not be entitled to any compensation or extension

1 of time for any delays or additional costs resulting from a compliance verification or exercise of a remedy.

2 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.			

3

1 **ATTACHMENT 9 TO EXHIBIT 4**

2 **COMPLIANCE WITH CARGO PREFERENCE ACT**

3 In accordance with FHWA's Memorandum dated December 11, 2015 on "Implementation of
4 Cargo Preference Act Requirements in the Federal-aid Highway Program," Developer and all construction
5 Subcontractors shall comply with the Cargo Preference Act of 1954 (46 U.S.C. §55305) and its
6 implementing regulations (46 CFR Part 381). Without limiting the foregoing, Developer agrees:

7 (a) To utilize privately owned United States-flag commercial vessels to ship at least 50
8 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers)
9 involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the
10 extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;

11 (b) To furnish within 20 days following the date of loading for shipments originating within
12 the United States or within 30 Business Days following the date of loading for shipments originating
13 outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English
14 for each shipment of cargo described in paragraph (a) above to both ADOT (through Developer in the case
15 of Subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development,
16 Maritime Administration, Washington, DC 20590; and

17 (c) To insert the substance of these provisions in all construction Subcontracts.

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EXHIBIT 5

SUBCONTRACTOR REQUEST FORMS

Exhibit 5-1	Professional Services Subcontractor Request Form
Exhibit 5-2	Construction Work Subcontractor Request Form

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EXHIBIT 5-1

PROFESSIONAL SERVICES SUBCONTRACTOR REQUEST FORM

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
PROFESSIONAL SERVICES SUBCONTRACTOR REQUEST FORM (SRF)
P3 Project – Design-Build-Maintain

Subcontractor	_____	ADOT TRACS No.	_____
AZ UTRACS No.	_____	ADOT Project No.	17 MA 229 H6800 01C
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: ☐ Yes (documentation may be required) ☐ No

Subcontractor Work Scope Items

\$ Amounts

(Provide description of Work)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

CERTIFICATION:

Developer certifies that it shall not permit or suffer the Subcontractor named herein to commence work until Developer submits to ADOT written notice of the Subcontractor's start date, as required by Section 11.4.2(b) of the Agreement, and that Developer shall provide an executed copy of the Subcontract authorized under this Subcontractor Request Form when required by Section 11.4.2(c) of the Agreement.

Authorized Developer Signature	Authorized Subcontractor Signature	Authorized Lower-Tier Signature
--------------------------------	------------------------------------	---------------------------------

Title	Date	Title	Date	Title	Date
-------	------	-------	------	-------	------

DBE Liaison Signature

Title _____ Date _____

FOR ADOT USE ONLY

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: ☐ Yes ☐ No

For Assistant State Engineer – Construction & Materials	Date	Field Reports	Date
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EXHIBIT 5-2

2

CONSTRUCTION WORK SUBCONTRACTOR REQUEST FORM

3

[See attached]

**ARIZONA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION SUBCONTRACTOR REQUEST FORM (SRF)
P3 Project – Design-Build**

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. _____

ADOT TRACS No. _____
ADOT Project No. 17 MA 229 H6800 01C
Developer _____
Telephone No. _____
Developer Amount \$ _____
Estimated Subcontract Amount \$ _____
Type of Work:
☐ Construction Work

Lower tier to:
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

Subcontracted Bid Item Nos

Subcontracted Description of Work

(Check box and provide dollar amount for joint/partial Items)

☐ \$ _____
☐ \$ _____
☐ \$ _____
☐ \$ _____

CERTIFICATION

Developer certifies the following:

- A. Developer shall not permit or suffer the Subcontractor requested herein to commence work until Developer submits to ADOT written notice of the Subcontractor's start date, as required by Section 11.4.2(b) of the Agreement, and Developer shall provide an executed copy of the Subcontract authorized under this Subcontractor Request Form when required by Section 11.4.2(c) 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. ADOT's DBE Special Provisions (Exhibit 6 of Agreement);
 7. ADOT's OJT Special Provisions (Exhibit 7 of 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 _____ Date _____	Title _____ Date _____	Title _____ 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 Reports _____	Date _____	Field _____
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1

EXHIBIT 6

2

ADOT'S DBE SPECIAL PROVISIONS

3

[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; and
7. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

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 49 C.F.R. Part 26, as amended, and these DBE Special Provisions.

1 In accordance with 49 CFR Part 26 and these DBE Special Provisions, Developer, for itself and for its
2 Subcontractors and Suppliers, whether certified DBE firms or not, shall commit to complying fully with the
3 auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions
4 contained in those federal requirements and these DBE Special Provisions. Developer agrees to assume
5 these contractual obligations and to bind Developer's Subcontractors contractually to the same at
6 Developer's expense.

7 **3.0 DEFINITIONS AND FORMS**

8 **3.01 Definitions**

9 **(A) Commercially Useful Function (CUF):** Commercially Useful Function and how to
10 credit DBE participation is set out fully in 49 CFR §26.55. In part, 49 CR 26.55(c)
11 defines CUF as follows:

12 A DBE performs a commercially useful function when it is responsible for
13 execution of the Work of the Agreement and carries out its responsibilities by
14 actually performing, managing, and supervising, the work involved. To perform a
15 commercially useful function, the DBE must also be responsible, with respect to
16 materials and supplies used on the Project, for negotiating price, determining
17 quality and quantity, ordering and installing (where applicable) materials, and
18 paying for the materials itself that it uses on the contract. To determine where a
19 DBE is performing a commercially useful function, ADOT must evaluate the
20 amount of work subcontracted, industry practices, whether the amount the firm
21 is to be paid under the contract is commensurate with the work it is actually
22 performing and the DBE credit claimed for its performance of the work, and other
23 relevant factors.

24 **(B) Committed DBE:** A committed DBE is a DBE that was identified by Developer,
25 typically on a DBE Intended Participation Affidavit form, to meet DBE Goals as a
26 condition of performance, and includes any substituted DBE that has
27 subsequently entered into a Subcontract to meet assigned contract goals.

28 **(C) Compliance Oversight Committee:** Interdisciplinary team responsible for
29 monitoring and overseeing DBE compliance and progress towards meeting DBE
30 goals on the Project.

31 **(D) Disadvantaged Business Enterprise (DBE):** A for-profit small business concern,
32 which meets both of the following requirements:

- 33 (1) Is at least 51 percent owned by one or more socially and economically
34 disadvantaged individuals or, in the case of any publicly owned business,
35 at least 51 percent of the stock is owned by one or more such individuals;
36 and
- 37 (2) Whose management and daily business operations are controlled by one
38 or more of the socially and economically disadvantaged individuals who
39 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:

- 1 (i) "Black Americans," which includes persons having origins in any
2 of the Black racial groups of Africa;
- 3 (ii) "Hispanic Americans," which includes persons of Mexican, Puerto
4 Rican, Cuban, Dominican, Central or South American, or other
5 Spanish or Portuguese culture or origin, regardless of race;
- 6 (iii) "Native Americans," which includes persons who are enrolled
7 members of federally or State recognized Indian tribe, Alaskan
8 Natives or Native Hawaiians;
- 9 (iv) "Asian-Pacific Americans," which includes persons whose origins
10 are from Japan, China, Taiwan, Korea, Burma (Myanmar),
11 Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia,
12 Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust
13 Territories of the Pacific Islands (Republic of Palau), Republic of
14 the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga,
15 Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong
16 Kong;
- 17 (v) "Subcontinent Asian Americans," which includes persons whose
18 origins are from India, Pakistan, Bangladesh, Bhutan, the
19 Maldives Islands, Nepal or Sri Lanka;
- 20 (vi) "Women;"
- 21 (vii) Any additional groups whose members are designated as socially
22 and economically disadvantaged by the Small Business
23 Administration (SBA), at such time as the SBA designation
24 becomes effective.

25 **3.02 List of Forms**

26 The following forms are referenced in and attached to these DBE Special Provisions or the Agreement. All
27 forms are also available at www.azdot.gov/bec and from the BECO office at 1801 W. Jefferson Street, Ste.
28 101, Mail Drop 154A, Phoenix, Arizona 85007.

Name of Form	Attachment to DBE Special Provisions
Construction DBE Intended Participation Affidavit Summary	Attachment A
Construction DBE Intended Participation Affidavit	Attachment B
Professional Services DBE Intended Participation Affidavit Summary	Attachment C
Professional Services DBE Intended Participation	Attachment D
Professional Services Subcontractor Request Form	<u>Exhibit 5-1</u> to the Agreement (not attached to DBE Special Provisions)
Construction Work Subcontractor Request Form	<u>Exhibit 5-2</u> to the Agreement (not attached to DBE Special Provisions)
DBE Certificate of Final Payments Professional Services and Construction	Attachment E
Summary of Final Payments for Construction	Attachment F
Summary of Final Payments for Professional Services	Attachment G
DBE Termination/Substitution/Reduction (TSR) Request	Attachment H

2 4.0 WORKING WITH DBES

3 ADOT works with DBEs and assists them in their efforts to participate in the highway construction program.
4 All Developers should contact ADOT's Business Engagement and Compliance Office (BECO) by phone or
5 through email, or at the address shown below, for assistance in their efforts to use DBEs on projects. BECO
6 contact information is as follows:

7 Arizona Department of Transportation
8 Business Engagement and Compliance Office
9 1801 W. Jefferson Street Ste. 101, Mail Drop 154A
10 Phoenix, AZ 85007
11 Phone (602) 712-7761
12 FAX (602) 712-8429
13 Email: contractorcompliance@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 <https://utracs.azdot.gov>.

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 <https://utracs.azdot.gov>. 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.

1 ADOT's certification of a DBE is not a representation of qualifications and/or abilities, but only that it has
2 met the criteria for DBE certification as outlined in 49 CFR Part 26. Developer bears all risks of ensuring
3 that DBE firms that Developer selects to work on the Project are able to perform the Work.
4

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 <https://utracs.azdot.gov>.

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://utracs.azdot.gov> 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 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 or Professional Service 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 11.2.5 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 Project 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)

Before any Design Work begins on the Project, Developer shall submit to ADOT for review and comment Professional Services DBE Intended Participation Affidavit Summary form along with Professional Services DBE Intended Participation Affidavit Individual forms 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, 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.

Before beginning any Construction Work on the Project, Developer shall submit to ADOT for review and comment a Construction DBE Intended Participation Affidavit Summary form along with Construction DBE Intended Participation Affidavit Individual forms for each DBE firm identified at that time to perform Construction Work. Thereafter, as each further Construction DBE is identified, Developer shall submit to ADOT for review and comment, before such DBE commences Construction Work, a Construction DBE Intended Participation Affidavit Individual form for such DBE. Developer shall receive no DBE credit for

1 Construction Work performed by DBEs prior to the required submission and resolution of any comments
2 from ADOT.

3 Developer shall submit a Professional Services or Construction DBE Intended Participation Affidavit from
4 each individual DBE Subcontractor or Supplier procured to work on the Project, on and subject to the
5 following terms and conditions.

6 1. All forms must be accurate and complete in every detail and must be signed by an officer
7 of Developer. Percentages and dollar amounts must be accurate, listed to two decimal
8 places and not rounded up or down.

9 2. A separate DBE Intended Participation Affidavit must be submitted for each DBE used to
10 meet the DBE Goals. Developer shall indicate each DBE's name, address, a description of
11 the work the DBE will perform, proposed Subcontract amount and the NAICS code
12 applicable to the kind of work the firm would perform on the Project. A list of certified
13 DBEs with their respective NAICS code can be located on the DBE Directory at AZ UTRACS
14 website <https://utracs.azdot.gov>. All partial items must be explained. If not, the DBE will
15 be considered to be responsible for the entire item. The intended DBE must complete and
16 sign the form, as specified therein, to confirm its participation.

17 3. Developer must determine DBE credit in accordance with Section 16.0 of these DBE
18 Special Provisions, entitled "Crediting DBE Participation Toward Meeting Goal."

19 4. Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) will
20 be considered for DBE credit. It shall be Developer's responsibility to ascertain the
21 certification status of designated DBEs to be used on the Project and to encourage any
22 out-of-state DBEs to become certified in Arizona.

23 5. All DBE commitment amounts must be finalized between the DBE and Developer prior to
24 submittal of DBE Intended Participation Affidavits. Developer is not permitted to inflate
25 DBE awards or overstate DBE award amounts on a DBE Intended Participation Affidavit
26 with the knowledge that the DBE will actually perform a small portion of the Work.
27 Reduction of DBE commitment amounts after submittal of the DBE Intended Participation
28 Affidavit and resolution of ADOT's comments thereon, whether occurring prior to or after
29 the DBE firm starts Work on the Project, without good cause, may be grounds for ADOT
30 declaring that Developer has failed to make Good Faith Efforts, and Developer may be
31 subject to remedies for such failure as outlined in Section 15.01 "Continuing Good Faith
32 Efforts" of these DBE Special Provisions. Scheduling conflicts are not evidence of good
33 cause as this should have been considered prior to submittal of DBE Intended
34 Participation Affidavits. Since Developer is required to use ADOT-approved DBEs
35 submitted on DBE Intended Participation Affidavit forms to meet DBE Goals, Developer is
36 responsible for ensuring DBEs are available and ready to perform when needed on the
37 Project prior to submission of DBE Intended Participation Affidavits.

38 6. Developer bears the risk of late submission or late delivery by the postal service or a
39 delivery service. Late submittal of DBE Intended Participation Affidavits may result in
40 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 and Construction Work 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 Work Subcontractor Request Forms, executed Subcontracts and all required documents outlined on the forms, must be submitted to ADOT for Committed DBEs, prior to start of work. Developer shall submit all other types of Subcontracts pursuant to Section 11.4.2(c) of the Agreement.

If Developer fails to correctly complete and submit a Professional Service or, Construction Work Subcontractor Request Form and executed DBE Subcontract within the specified time frames and fails to resolve all comments from ADOT, 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 the DOORS (After NTP 2)

Within ten days after a DBE Subcontractor/Supplier request is processed by ADOT pursuant to Section 12.03 of these DBE Special Provisions, Developer shall log into the ADOT DBE and OJT Online Reporting System ("DOORS") 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 the DOORS for all Non-DBE Subcontractors/Suppliers. This information must be entered and/or verified in the DOORS monthly

throughout the course of the D&C Work as all DBE, as well as Non-DBE, Subcontracts are executed by Developer.

12.05 Proposer's List and AZUTRACS 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 the Proposer's List of All Subcontractors, Suppliers, Service Providers and Manufacturers in the AZ UTRACS (<https://utracs.azdot.gov/BiddersListInfo/>) 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 at <https://utracs.azdot.gov>; a centralized database for companies that seek to do business with ADOT. ADOT uses the Proposer'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 Proposer's List throughout the Term for every firm quoting, bidding or expressing an interest in providing subcontract services for the Project. Developer must submit Proposer's List with the required information 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 Proposer's List on a monthly basis, Developer shall ensure that all Subcontractors are registered as a vendor in AZUTRACS and provide an AZUTRACS Vendor Number for each Subcontractor on the Proposer's List submitted each month.

To determine if a Subcontractor is registered as a vendor, search by firm name at: <https://utracs.azdot.gov>. 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://utracs.azdot.gov>.

Visit the AZ UTRACS website at <https://utracs.azdot.gov> for further information or contact the BECO Contract Compliance Office at (602) 712-7761, or email contractorcompliance@azdot.gov.

If Developer fails to correctly complete and submit Proposer's List that bid, quoted or expressed interest in working on the Project each month, with the monthly reports required pursuant to Section 18.02 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 coordinate and meet with the Compliance Oversight Committee on a monthly 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 Project Substantial Completion Date. These records and documents shall be subject to ADOT's rights of inspection, copying and audit set forth in Sections 25.4 and 25.5 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 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 contractcompliance@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 18.02 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 guaranty 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 <https://adotdoors.dbesystem.com>. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

1 If a DBE cannot complete its Work due to failure to obtain or maintain its licensing, Developer shall notify
2 ADOT and ADOT's BECO immediately after Developer becomes aware of the situation, to request approval
3 to replace the DBE with another DBE. Developer shall follow the DBE Termination/Substitution
4 requirements in Section 19 of these DBE Special Provisions.

5 ADOT's certification is not a representation of a DBE's qualifications and/or abilities. Developer bears all
6 risks that the DBE may not be able to perform its Work for any reason.

7 A DBE may participate as a joint venture partner with Developer, a Subcontractor, or a Supplier. A DBE
8 joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in
9 addition to meeting the requirements for ownership and control. When a DBE performs as a joint venture
10 partner, ADOT will credit toward the DBE Goals only that portion of the total dollar value of the Project
11 that is clearly and distinctly performed by the DBE's own forces.

12 The dollar amount of Work to be accomplished by DBEs, including partial amount of a lump sum or other
13 similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed
14 to between the relevant parties.

15 With the exception of bond premiums, all Work must be attributed to specific bid/work items. Where
16 Work applies to several items, the DBE subcontracting arrangement must specify unit price and amount
17 attributable to each bid/work item. DBE credit for any individual item of Work by the DBE shall be the
18 amount to be paid to the DBE for which it performs a CUF, as more particularly provided in Section 16.05
19 of these DBE Special Provisions.

20 Bond premiums may be stated separately, so long as the arrangement between Developer and the DBE
21 provides for separate payment not to exceed the price charged by the bonding company.

22 DBE credit may be obtained only for specific Work done for the Project, supply of equipment specifically
23 for physical work on the Project, or supply of materials to be incorporated into the Project. DBE credit will
24 not be allowed for costs such as overhead items, capital expenditures (for example, purchase of
25 equipment), force account and office items.

26 If a DBE performs part of an item (for example, installation of materials purchased by a Non-DBE), the DBE
27 credit shall not exceed the lesser of (1) the DBE's Subcontract price or (2) Developer's cost for the item,
28 less a reasonable deduction for the portion performed by the Non-DBE.

29 Developer shall receive credit for lower-tier Subcontracts issued to DBEs by non-DBE Subcontractors. Any
30 lower-tier Subcontract to a DBE used to meet the DBE Goals must meet the requirements of the higher-
31 tier DBE Subcontract.

32 When a DBE subcontracts a part of the Work under its Subcontract to another firm, ADOT will credit the
33 value of such Subcontract toward the DBE Goals only if the DBE's Subcontractor is itself a DBE and
34 performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count
35 toward the DBE Goals.

36 Developer shall receive credit for the entire amount of fees or commissions charged by a DBE firm for
37 providing a bona fide service, such as professional, technical, consultant, or managerial services, or for
38 providing bonds or insurance specifically required for the performance of the Work, provided the fees are
39 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 <https://adotdoors.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

1 transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of
2 transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be
3 allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions
4 pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

5 The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks
6 from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for
7 the total value of these hauling services.

8 Example: DBE Firm X uses two of its own trucks on a Project. It leases two additional trucks from non-DBE
9 Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded
10 for the total value of the transportation services provided by all four trucks.

11 For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the
12 truck. This does not preclude the leased truck from working for others during the term of the lease with
13 the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.
14 Leased trucks must display the name and identification number of the DBE.

15 DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for
16 standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks.

17 Leases for trucks must be long term (extending for a fixed time period of not less than one year and not
18 related to time for Project performance) and must include all attendant responsibilities such as insurance,
19 titling, hazardous waste requirements, and payment of drivers.

20 **16.07 Materials and Supplies**

21 If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials
22 or supplies is credited.

23 A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces,
24 on the premises, the materials, supplies, articles, or equipment required under the Agreement.

25 If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials
26 or supplies is credited.

27 A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other
28 establishment in which the materials, supplies, articles, or equipment required under the Agreement are
29 bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

30 To be a regular dealer, the firm must be an established, regular business that engages, as its principal
31 business and under its own name, in the purchase and sale or lease of the products in question.

32 A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or
33 asphalt without owning, operating, or maintaining a place of business, as provided above, if the person
34 both owns and operates distribution equipment for the products. Any supplementing of regular dealers'
35 own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or project-by-
36 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 expeditor) 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 Changes to the Agreement

The base figure used to compute the percentage of actual dollars paid to DBEs shall be adjusted in accordance with Section 11.2.8 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 DOORS 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 ADOT.
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 ADOT 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 DOORS 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 15.10.1 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 15.2.3(b) 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;
- Proposer's List of firms who quoted or bid on Subcontracts during the previous month (using (<https://utracs.azdot.gov/BiddersListInfo/>));
- A separate DBE Intended Affidavit Summary for each of (a) Professional Services and (b) Construction Work for all DBEs authorized under Sections 12.02 of these DBE Special Provisions to work on the Project during the previous month;
- Non-DBE Subcontract awards for Professional Services and Construction Work including Small Business Concerns (SBCs);
- Amounts earned by and paid to all Professional Services and Construction DBEs and non-DBEs the previous month;
- Certification of Final DBE Payment, as and when required under Section 18.02.3 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.

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 Work 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.

Not later than 30 days prior to Final Acceptance, 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 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 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 18.02.4 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 within 24 hours of any sign of any reason for potential 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;

1 7. The total dollar amount remaining to be paid to the Committed DBE for Work completed,
2 but for which the Committed DBE has not received payment, and over which Developer
3 has no dispute; and

4 8. The projected date that Developer will require a substitution or replacement DBE to
5 commence Work, if the request is approved.

6 ADOT will consider both Developer's request and the Committed DBE's response and explanation. ADOT
7 will grant its written consent for terminating the Subcontract of a Committed DBE only if Developer
8 demonstrates good cause that the DBE is unable, unwilling or ineligible to perform. Such written consent
9 to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated
10 DBE. ADOT shall not be obligated to consent to termination or substitution of a Committed DBE based
11 solely on ability to negotiate a more advantageous Subcontract with another Subcontractor.

12 **19.04 Good Cause**

13 Good cause to terminate and/or substitute a Committed DBE includes the following in relation to the
14 Committed DBE:

- 15 1. Fails or refuses to execute a written Subcontract;
- 16 2. Fails or refuses to perform the Work of its Subcontract in a way consistent with the
17 applicable requirements and provisions of the Contract Documents; provided, however,
18 that good cause does not exist if the failure or refusal of the Committed DBE to perform
19 such Work results from the bad faith, failure to pay, material breach or discriminatory
20 action of Developer or the subcontracting party;
- 21 3. Fails or refuses to meet Developer's reasonable, nondiscriminatory bond requirements;
- 22 4. Is the subject of a voluntary or involuntary petition in bankruptcy, becomes insolvent, or
23 exhibits credit unworthiness;
- 24 5. Is ineligible to work on public works contracts because of suspension and debarment
25 proceedings pursuant to federal or state law;
- 26 6. It is not a responsible contractor;
- 27 7. Voluntarily withdraws from the Subcontract and provides to ADOT written notice of its
28 withdrawal;
- 29 8. Is ineligible to receive DBE credit for the type of Work required;
- 30 9. A DBE owner dies or becomes disabled with the result that is unable to complete its Work
31 on the Subcontract; or
- 32 10. Other documented good cause that ADOT determines compels the termination and/or
33 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 DBE Special Provisions. If ADOT approves the termination of a Committed DBE, Developer shall make Good Faith Efforts as identified in Section 15.01 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 DBE Special Provisions shall apply with respect to the proposed substitute DBE. Approval from ADOT must be obtained prior to the substituted DBE beginning work.

20.0 CERTIFICATION OF FINAL DBE PAYMENTS

In anticipation of final payment for Construction Work, Developer shall submit to ADOT a DBE Certification of Final Payments, Construction and Professional Services, a Summary of Final Payments for Construction, and a Summary of Final Payments for Professional Services. Developer shall submit such forms not later than 30 days prior to Final Acceptance. The forms shall include a list of all DBEs that worked on the applicable Design Work or Construction 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.

ADOT will use the DBE Certification of Final Payments, Construction and Professional Services, Summary of Final Payments for Construction, and Summary of Final Payments for Professional Services, together with the Final DBE Utilization Summary Report, 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 Civil Remedies" rules provided in 49 CFR Part 31.

ATTACHMENTS TO EXHIBIT 6

DBE SPECIAL PROVISIONS – FORMS

Name of Form	Attachment to DBE Special Provisions
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
DBE Certificate of Final Payments, Professional Services and Construction	Attachment E
Summary of Final Payments for Construction	Attachment F
Summary of Final Payments for Professional Services	Attachment G
DBE Termination/Substitution/Reduction (TSR) Request	Attachment H

ATTACHMENT A

ARIZONA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Intended Participation Affidavit – Summary

Use form at <https://apps.azdot.gov/files/beco/adotcompliance/Construction/106C-DBE-Intended-Participation-Affidavit-Summary-Prime%20305S.pdf>

BECO FORM 106C – Rev. 2-01-2019

ATTACHMENT B

ARIZONA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

INTENDED PARTICIPATION AFFIDAVIT - Individual

Use form at <https://apps.azdot.gov/files/beco/adotcompliance/Construction/105C-DBE-Intended-Participation-Affidavit-Individual-Form.pdf>

BECO FORM 105C Rev. 2-01-2019

ATTACHMENT C

ARIZONA DEPARTMENT OF TRANSPORTATION
PROFESSIONAL SERVICES
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit – Summary

Use form at <https://apps.azdot.gov/files/beco/adotcompliance/Professional-Services/206PS-DBE-Intended-Participation-Summary-Affidavit.pdf>

BECO FORM 206PS (Rev. 5/1/2019)

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ATTACHMENT D

PROFESSIONAL SERVICES
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit - Individual

Use form at <https://apps.azdot.gov/files/beco/adotcompliance/Professional-Services/205PS-DBE-Intended-Participation-Affidavit.pdf>

BECO FORM 205PS (Rev. 5/1/2019)

ARIZONA DEPARTMENT OF TRANSPORTATION

ATTACHMENT E

DBE CERTIFICATE OF FINAL PAYMENTS,
PROFESSIONAL SERVICES AND CONSTRUCTION

CERTIFICATION OF FINAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PAYMENTS

PROFESSIONAL SERVICES/DESIGN CONTRACTS
(Submit one form for each DBE involved in the contract)

Go to form at <https://azdot.gov/business/business-engagement-and-compliance/dbe-contract-compliance/contract-specs-and-forms>

BECO Form 210PS (Rev 5-1-19)

CONSTRUCTION

CERTIFICATION OF FINAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PAYMENTS
(Submit one form for each DBE working on the contract)

Go to form <https://apps.azdot.gov/files/beco/adotcompliance/Construction/110C-Certification-of-Final-DBE-Payment.pdf>.

BECO Form 110C (Rev 7-1-2016)

1

ATTACHMENT F

2

SUMMARY OF FINAL PAYMENTS FOR CONSTRUCTION

3

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

SUMMARY OF FINAL PAYMENTS
CONSTRUCTION

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.					

1

ARIZONA DEPARTMENT OF TRANSPORTATION

2

	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.					

3

Developer/Project Manager Signature: _____

Date: _____

4

DBE Liaison Officer Signature: _____

Date: _____

5

6

BECO Form 115DBM

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3
4

ATTACHMENT G

SUMMARY OF FINAL PAYMENTS FOR PROFESSIONAL SERVICES

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

<u>SUMMARY OF FINAL PAYMENTS</u> <u>PROFESSIONAL SERVICES</u>	
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

	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

1 **ATTACHMENT H**

2 ARIZONA DEPARTMENT OF TRANSPORTATION

3 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

4 TERMINATION/SUBSTITUTION/REDUCTION (TSR) REQUEST

5 Go to form at [https://azdot.gov/business/business-engagement-and-compliance/dbe-contract-](https://azdot.gov/business/business-engagement-and-compliance/dbe-contract-compliance/contract-specs-and-forms)

6 [compliance/contract-specs-and-forms](https://azdot.gov/business/business-engagement-and-compliance/dbe-contract-compliance/contract-specs-and-forms).

7 BECO Form 108C (Rev. 11/08/2018)

1 **EXHIBIT 7**

2 **ADOT'S OJT SPECIAL PROVISIONS**

3 Introduction

4 The following terms as used in this Exhibit 7 have the following meanings:

5 "business days" means and refers to Business Days.

6 "contractor" means and refers to Developer.

7 "Department" means and refers to ADOT.

8 "OJT goals" means and refers to the OJT Goals.

9 "project" means and refers to the Project.

10 "subcontract" means and refers to a Subcontract.

11 "subcontractor" means and refers to a Subcontractor.

12 (923OJT, 12/09/19)

13 **ITEM 9230003 ON-THE-JOB TRAINING WITH GOALS**

14 **923-1 Description:**

15 The contractor shall provide On-The-Job training (OJT) aimed at moving minorities, women, and
16 disadvantaged OJT Trainees into Journeymen in various types of construction trades or job classifications
17 in accordance with 23 CFR Part 230, Part 230.111 and Part 230, Appendix B.

18 It is the intention of these OJT Special Provisions that training be provided in the construction
19 classifications/crafts rather than for office support positions. Some off-site training is permissible as long
20 as the training is an integral part of an approved training program and does not comprise of a significant
21 part of the overall training.

22 **923-1.01 General:**

23 Training and upgrading of minorities and women toward Journeyman status is the primary objective of
24 these OJT Special Provisions. Accordingly, the contractor shall make every effort to enroll minority,
25 women, and disadvantaged OJT Trainees (e.g., by conducting systematic and direct recruitment through
26 public and private sources likely to yield minority and women OJT Trainees) to the extent that such
27 persons are available within a reasonable area of recruitment. The contractor will be responsible for
28 demonstrating the steps that it has taken in pursuance thereof, prior to a determination as to whether
29 the contractor is in compliance with these OJT Special Provisions. This training commitment is not
30 intended, and shall not be used, to discriminate against any applicant for training, whether a member of
31 a minority group or not.

32 The OJT goals on this project are:

- 33 • Minimum of 10,800 OJT Trainee hours on the project, with a minimum required number of
34 training hours of 600 for each OJT Trainee

- Minimum of 2 OJT Trainees must complete at least 2,000 hours solely on the project in the same trade or work classification

- Minimum of 1 OJT Trainee must complete hours on the project necessary to achieve Journeyman status (minimum of 2,000 hours must be completed by this OJT Trainee solely on the project)

The contractor shall provide training and see that all OJT Trainees are afforded opportunities 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 D&C Period.

Where feasible, 25 percent of apprentices or OJT Trainees in each occupation shall be in their first year of apprenticeship or training. OJT Trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of Journeymen in the various classifications within a reasonable area of recruitment. The ratio of apprentices and OJT Trainees to Journeymen shall not be greater than permitted by the terms of the approved training program being utilized.

It is normally expected that an OJT Trainee will begin training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in the assigned work classification or until the OJT Trainee has completed the training program. It is not required that all OJT Trainees be on the project for the entire length of the contract.

No employee shall be employed as an OJT Trainee in a classification in which they have successfully completed a training course leading to Journeyman status, or in which they have been employed as a Journeyman. The contractor shall satisfy this requirement by including appropriate questions in the employment application or by other suitable means. The contractor shall maintain documentation that shows the employee's work and training history.

923-1.02 Subcontractor OJT Trainees:

The contractor may, at its discretion, utilize approved subcontractors on the project to meet its OJT goal on the project. In the event that the contractor subcontracts a portion of the contract work, the contractor shall determine how many, if any, of the OJT Trainees are to be trained by the subcontractor. However, the contractor shall retain the primary responsibility for meeting the training requirements outlined in these OJT Special Provision. The contractor shall ensure that these OJT Special Provisions are made applicable to such subcontract.

The subcontractor's OJT Trainee(s) must be employed by the subcontractor and be enrolled in an approved training program.

923-1.03 Definitions:

Banking-Carryover Hours:

OJT hours completed by an OJT Trainee that exceeds the amount of required hours on the project and are eligible to be credited to a future project. Banked-Carryover hours will only be credited when the same OJT Trainee that completed the excess hours is used on the future project.

Business Engagement and Compliance Office (BECO):

BECO is responsible for oversight of the OJT program, which targets under-represented segments of the U.S. workforce, including minorities, women and disadvantaged individuals. BECO assesses OJT hour goals on contracts and monitors them to ensure that OJT Trainees receive the required number of training hours.

Classification/Craft

Type of occupational category, trade, or job being done by an OJT Trainee on a federal-aid funded highway construction project.

Disadvantaged Persons:

A person who meets one of the following:

- (1) 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;
- (2) Is a member of a family and/or household that receives (or has been determined within the 6-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;
- (3) Is a foster child on behalf of whom State or local government payments are made;
- (4) Does not have a high school diploma or GED; or
- (5) Is from a family whose total annual household income is below the federal poverty limits.

Journeyman:

A person who is capable of performing all the duties within a given job classification or craft.

OJT Trainee:

A person who is:

- (1) A minority, woman, or disadvantaged individual enrolled in an approved training program; or
- (2) Any other individual enrolled in an approved training program, whose training hours are approved by the Department and can be credited toward the OJT contract goals.

Show Cause Notice:

A written notification from the Department to the contractor based on a determination of non-compliance with the requirements of these OJT Special Provisions. The notice informs the contractor of the specific basis for the determination and provides the opportunity for the contractor to present an explanation why they were unable to meet the training goal.

923-1.04 OJT Training Programs:

The minimum length and type of training for each classification will be established in the training program selected by the contractor and approved by the Department and FHWA. The Department and FHWA will approve a program if it is reasonably calculated to meet equal employment opportunity obligations and qualifies the average OJT Trainee for Journeyman status in the classification concerned by the end of the training period as defined in the training program.

The Department recognizes the following OJT Training programs:

(A) OJT Programs approved by FHWA or Apprenticeship programs the Department of Labor (DOL) prior to the start of the OJT Trainee commencing work.

(B) Registered union or other approved apprenticeship programs registered with the Bureau of Apprenticeship, U.S. DOL, Employment and Training Administration, Bureau of Apprenticeship and Training or the Arizona Apprenticeship Office, Arizona Department of Economic Security programs recognized by the Bureau.

If the contractor intends to use a training program other than those specified above, it must be approved by the Department and FHWA prior to the OJT Trainee commencing work on the classification covered by the program. If the contractor intends to submit a training program for approval prior to the start of a contract, it must submit the program as soon as possible after notification of contract award as approval of a training program may take up to four weeks. Several FHWA approved training program templates for specified classifications are available on the BECO website.

The contractor shall furnish each OJT Trainee with a copy of the Training Program the OJT Trainee is enrolled in, and other documentation related to the training program. The contractor shall provide training that develops the skills outlined in the training program. Multiple OJT training programs can be used on the project.

All training programs shall be administered in a manner consistent with the equal employment obligations of federal-aid highway construction contracts. The Department reserves the right to request documentation that the contractor's training program fulfills these obligations.

The OJT Trainee will be paid the appropriate OJT Trainee Davis-Bacon wage rates for training classifications/crafts on federally-funded projects. The contractor shall compensate OJT Trainees not less than the rate outlined in the approved training program for the OJT Trainee's level of progress, expressed as a percentage of the Journeyman hourly rate specified in the applicable wage determination.

The contractor shall provide for the maintenance of records and furnish/submit required information and reports documenting its performance under these OJT Special Provisions. Such records shall be available at reasonable times and places for inspection or review by the Department and FHWA.

923-1.05 OJT Liaison:

The contractor shall designate an OJT Liaison who shall be responsible for monitoring and administering the contractor's OJT Program and monitoring the OJT Trainees' progress. The OJT Liaison may have other responsibilities for the contractor. The OJT Liaison shall serve as the point of contact for the Department regarding information, documentation, and conflict resolution relating to the contractor's OJT program.

923-2 Online Resources:

DBE and OJT Online Reporting System (DOORS) Website:
<https://adotdoors.dbesystem.com>

BECO Website:
<https://azdot.gov/business/business-engagement-and-compliance>

923-3 Requirements:

923-3.01 Documentation:

Documentation related to OJT training can be found on the Department's BECO website. The contractor shall complete and submit the following information to the Department:

(A) OJT Commitment/Schedule:

The contractor shall submit the completed OJT Commitment/Schedule through the DOORS, no later than the preconstruction conference. The OJT Commitment/Schedule shall include the project information, project training plan information, project training schedule, and the contractor's signature of acknowledgement.

If the monthly training hours commitment, as shown on the OJT Commitment/Schedule, changes, or is projected to change, during the progression of the project, a supplemental OJT Commitment/Schedule shall be submitted in the DOORS. The supplemental OJT Commitment/Schedule shall be submitted within five business days after a change.

If the OJT Commitment/Schedule or the supplemental OJT Commitment/Schedule shows less than the OJT goals for the project, the contractor shall submit to the Engineer Good Faith Effort documentation, as described below in Subsection 923-3.01(C), that demonstrates reasons why the contractor cannot meet the OJT goals.

(B) OJT Enrollment and Progression:

(1) OJT Enrollment:

OJT Enrollment information shall be submitted through the DOORS by the contractor at least five business days prior to an OJT Trainee's start date. OJT Enrollment information shall be completed and includes the OJT Trainee's name and address, employment status, gender and ethnicity, training program (s), classification/craft, and whether banked hours are being requested from a previous project.

BECO will review the OJT Enrollment information within five business days, and if approved, hours will be retroactively credited to the date the OJT Enrollment information is received by BECO.

To receive OJT credit, apprentice's current apprentice certificate or proof of registration from a union or approved apprenticeship program shall be uploaded into LCPTracker by the contractor within five business days after the apprentice's start date, in addition to completing the OJT enrollment information in the DOORS.

1 If the Arizona Apprenticeship Office Representative's signature is missing from the apprentice certificate,
2 the contractor shall also upload the apprentice's US Department of Labor, Office of Apprenticeship
3 Certificate to LCPtracker. The contractor shall not receive training credit or reimbursement until the
4 certificate is uploaded.

5 **(2) Progression of Training and Change of Status:**

6 Progression of Training-Level Up and Change of Status shall be submitted through the DOORS each time
7 an OJT Trainee advances, progresses to another training level or milestone in his/her training program, or
8 has a change of job classification. Hours will be retroactively credited to the date the information is
9 received.

10 Hours that exceed the maximum indicated in the program for a certain level will not be credited. Once a
11 level is completed, the OJT Trainee should be moved to the next level towards Journeyman status.

12 **(C) Good Faith Efforts**

13 Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, proactive
14 and continuous results-oriented measures (23 CFR 230.409(g)(4)). Good Faith Efforts may include, but are
15 not limited to:

- 16 (1) Solicitation of existing employees to gain referrals for minority, women, and
17 disadvantaged persons;
- 18 (2) Upgrading minority, women, and unskilled workers into the skilled classifications
19 when possible;
- 20 (3) Accepting applications at the project site, at the contractor's office or online;
- 21 (4) Review and follow up on previously received applications from minority, women,
22 and disadvantage persons;
- 23 (5) Documentation of efforts to achieve diversity on federal-aid projects and the
24 contractor's workforce in general;
- 25 (6) Contact the ADOT BECO OJT Supportive Services Program to inquire about
26 potential OJT Trainee candidates from ADOT-sponsored Pre-Apprentice
27 programs.
- 28 (7) Contact construction recruitment organizations throughout Arizona;
- 29 (8) Review of the construction-specific recruitment publications in Arizona;
- 30 (9) Publish a recruitment notification in local newspapers and other sources.

31 **923-3.02 Training Program Completion:**

32 Once the OJT Trainee completes the required number of levels and hours of training for the same
33 classification or craft, or completes an approved training program, the OJT Trainee is considered to have

completed the training program it is enrolled under. The contractor shall not receive OJT credit for hours exceeding the maximum number of training hours required for completion of the selected training program.

Once an OJT Trainee completes a specific training level for a classification or craft, the contractor shall not be permitted to submit that OJT Trainee for enrollment or reimbursement at that same level within the same classification or craft, however the same OJT Trainee can be enrolled in a different classification or craft.

The contractor shall provide to each OJT Trainee and the Department documentation showing the type and length of training satisfactorily completed upon successful completion of a training program.

For an apprenticeship program, the Apprenticeship office will issue a certificate of completion in said craft, a DOL certificate, and a Journeyman's card.

923-3.03 Banking-Carryover Hours:

At the completion of the project, the contractor may submit a Banking-Carryover Hours request in the DOORS, to carryover training hours for a specific OJT Trainee on the project to be used on a future project. Banked hours that are carried over to a project may lower the required number of training hours the contractor is required to complete on that project. The OJT Trainee shall be placed on a subsequent project with the intent that the OJT Trainee is progressing towards completion of a training program. Banked hours cannot be transferred to other OJT Trainees. No additional payment will be paid for banked hours carried over to other projects.

Trainee hours working on multiple projects at the same time can be accumulated to be counted as banked hours to be used on a single future project by the same OJT Trainee.

923-3.04 OJT Project Completion and Banked Hours Request:

OJT Project Completion and Banked Hours shall be submitted through the DOORS within 60 business days after completion of training.

923-4 Method of Measurement:

OJT training hours will be measured by the hour to the nearest half hour.

Measurement of hours towards the training goal will be made as the OJT Trainee completes hours on the project. Hours are considered complete if the OJT Trainee performs hours on the project, is OJT enrolled, and is provided required training by the program.

No measurement for payment will be made for OJT Trainee hours in which OJT enrollment information has not been received and approved by the Department.

923-5 [Reserved]

923-6 Monitoring and Compliance Mechanisms:

(A) Monthly Reporting

Contractor shall report monthly hours for each OJT Trainee in the DOORS by the 15th of the month following the month of training hours completed.

(B) Monitoring

The Department will conduct periodic reviews of OJT Trainee hours and monitor contractor's progress towards meeting the OJT goal on the project.

(C) Site Visits:

The Department may conduct periodic monitoring site visits to the worksite to review OJT program compliance, during working hours on the project. The Department will notify the OJT Liaison at least 24 hours prior to a site visit if the OJT Liaison is required to be at the site visit. The site reviews may include, among other activities, interview of OJT Trainees, the contractor, and its employees. The contractor shall cooperate in the review and make its employees available. The contractor's OJT Liaison shall be reasonably available to meet with Department staff as well as be available to respond to periodic emails and phone calls from the Department to check on the progress of OJT Trainees. The Department will make efforts to ensure minimal disruption to the work and coordinate site visit times with other Department divisions, as applicable (for example, Davis-Bacon interviews).

(D) Compliance Determination:

Compliance will be determined at the end of the project construction by the Department's evaluation of:

- (1) The contractor's use of OJT Trainees in conformance with the approved training program;
- (2) The number of OJT Trainees and hours completed on the project as reported on the OJT Project Completion in the DOORS;
- (3) Any Good Faith Effort documentation submitted by the contractor throughout the life of the project as to why any contract OJT goal was not met; or
- (4) Whether the OJT Trainees used in the project were a minority, woman or disadvantaged individual.

If at the conclusion of the project construction, the contractor shows evidence of a lack of Good Faith Effort with the compliance requirements identified above, the Department will issue a Show Cause Notice outlining any findings of non-compliance.

Within 30 business days of receiving a Show Cause Notice, the contractor may submit a written response to the Department providing any additional evidence that it made Good Faith Efforts to meet the OJT goals.

If the contractor fails to submit a written response to the Show Cause Notice within the specified period

- 1 or the written response to the Show Cause Notice does not cause the Department to change its findings
2 of non-compliance, the Department will issue its final notice of non-compliance to the contractor
3 regarding the non-compliance.
- 4 If a final notice of non-compliance is issued, the Department will deduct an amount equal to \$6.00
5 multiplied by the number of hours not completed towards the OJT goals as shown in the equation below.
6 The amount will be deducted from the contractor's final payment of the D&C Price or from monthly
7 installments of the O&M Price.
- 8 $\$6.00 \times (\text{OJT Hours Goals} - \text{OJT Hours Completed})$

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EXHIBIT 8

KEY SUBCONTRACTORS AND KEY PERSONNEL

Exhibit 8-1	Key Subcontractors
Exhibit 8-2	Key Personnel

EXHIBIT 8-1

KEY SUBCONTRACTORS

Firm	Capacity / Role
Kiewit Engineering Group Inc.	Lead Engineering Firm
DBi Services, LLC*	Lead O&M Firm

Note: There is no Subcontract with the Lead Contractor. Developer is acting as the Lead Contractor.

*Note: Developer shall propose a substitute Lead O&M Firm or self-performance of the O&M Work for ADOT's prior written approval, as set forth in Section 11.4.4(c) of the Agreement.

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EXHIBIT 8-2
KEY PERSONNEL

Key Personnel Position	Individual's Name	Employing Firm Name	Contact Information
Project Manager	Allen Mills	Kiewit Infrastructure West Co.	Phone: (602) 437-7878 (office) Phone: (480) 226-8254 (mobile) E-mail: Allen.mills@kiewit.com
Construction Manager	Wade Tinant	Kiewit Infrastructure West Co.	Phone: (602) 437-7878 (office) Phone: (602) 316-8058 (mobile) Email: wade.tinant@kiewit.com
Design Manager	Avi Schmerer	Kiewit Engineering Group Inc.	Phone: (303) 710-3525 (mobile) Email: avi.schmerer@kiewit.com
Maintenance of Traffic Manager	Chris Williams	Y2K Engineering, LLC	Phone: (480) 696-1701 (office) E-mail: cwilliams@y2keng.com
Quality Manager	Kenneth Sander	Kiewit Infrastructure West Co.	Phone: (951) 840-1220 (mobile) E-mail: kenneth.sander@kiewit.com
Safety Manager	Casey Lord	Kiewit Infrastructure West Co.	Phone: (602) 437-7878 (office) Phone: (602) 920-9391 (mobile)

Public Relations Manager	Kristen Darr	Central Creative, LLC	Phone: (602) 368-9644 (mobile) E-mail: kristen@centralcreative.com
DBE/OJT Outreach and Compliance Manager	Cassandra Johnson	CLJ Construction Consulting, LLC	Phone: (602) 694-3309 (mobile) Email: cassandra@cljaz.com

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EXHIBIT 9

FORMS OF PERFORMANCE AND PAYMENT BONDS

Exhibit 9-1	Form of O&M Performance Bond ¹
Exhibit 9-2	Form of Multiple Obligee Rider for O&M Performance Bond
Exhibit 9-3	Form of O&M Payment Bond
Exhibit 9-4	Form of Multiple Obligee Rider for O&M Payment Bond

¹ If the bond is to secure the performance or payment obligations of the Lead O&M Firm rather than Developer, then:

(a) the form of O&M performance bond as set forth in Exhibit 9-1 shall be revised to reflect the Lead O&M Firm as the “Principal” or “Contractor”, Developer in place of ADOT as the bond obligee, and the Subcontract between Developer and the Lead O&M Firm in respect of the Project as the “Agreement” and the “Contract Documents”;

(b) the form of O&M payment bond set forth as Exhibit 9-3 shall be revised to reflect that it inures to the benefit of all persons supplying labor or materials to the Lead O&M Firm or the Lead O&M Firm’s Subcontractors; and

(c) the multiple obligee riders in the forms set forth as Exhibit 9-2 and Exhibit 9-4, as applicable, must be provided that identify ADOT as the “Ultimate Obligee.”

Further, if there is more than one Lead O&M Firm, or if Developer has a direct Subcontract for any portion of the O&M Work with a Subcontractor in addition to the Lead O&M Firm, and Developer is not the Principal under the bonds, then Developer shall provide bonds from each such Lead O&M Firm and each such Subcontractor, as provided in Section 12.5 of the Agreement.

1 **EXHIBIT 9-1**

2 **FORM OF O&M PERFORMANCE BOND**

3 I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction)

4 Bond No. _____

5 Effective Date of Bond: _____

6 WHEREAS, the Arizona Department of Transportation ("Obligee") has awarded to Kiewit-
7 Fann Joint Venture, a joint venture formed by and between Kiewit Infrastructure West Co. and Fann
8 Contracting Inc. under the laws of the State of Delaware ("Principal"), a Design-Build-Operate-Maintain
9 Agreement for the I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction) Project, duly executed and
10 delivered as of October 28, 2021 (the "Agreement"), on the terms and conditions set forth therein; and

11 WHEREAS, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful
12 performance of its obligations related to the O&M Work under the Contract Documents.

13 NOW, THEREFORE, Principal and _____, ("Surety"), holder of a certificate of
14 authority to transact surety business in the State of Arizona, are held and firmly bound unto Obligee in
15 the amount of \$[●] (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and
16 severally firmly bind themselves and their successors and assigns.

17 THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully
18 perform and fulfill all of the Bonded Obligations set forth below, then the obligations under this Bond shall
19 be null and void; otherwise this Bond shall remain in full force and effect.

20 The following terms and conditions shall apply with respect to this Bond:

21 1. The Contract Documents are incorporated by reference herein. Capitalized terms
22 not separately defined herein have the meanings assigned such terms in the Agreement.

23 2. This Bond specifically guarantees the performance of each and every
24 undertaking, covenant, term, condition, agreement and obligation of Principal under the Contract
25 Documents, including any and all alterations, modifications, amendments and supplements thereto,
26 relating to the O&M Work and arising during the term of this Bond set forth in Paragraph 8 of this Bond,
27 including but not limited to Principal's liability for payment in full of all Liquidated Damages and
28 Noncompliance Charges as specified in the Contract Documents that accrue during such term (collectively
29 the "Bonded Obligations"), but not to exceed the Bonded Sum.

30 3. The guarantees contained herein shall survive the expiration or termination of
31 the O&M Period (if occurring during the term of this Bond) with respect to the Bonded Obligations that
32 survive such expiration or termination.

33 4. Whenever Principal shall be, and is declared by Obligee to be, in default under
34 the Contract Documents with respect to any of the Bonded Obligations, provided that Obligee is not then
35 in material default thereunder, Surety shall promptly:

1 a. arrange for the Principal to perform its Bonded Obligations in accordance
2 with the terms and conditions of the Contract Documents then in effect; or

3 b. perform the Bonded Obligations of the Principal in accordance with the
4 terms and conditions of the Contract Documents then in effect, through its agents or through independent
5 contractors; or

6 c. obtain bids or negotiated proposals from qualified contractors
7 acceptable to the Obligor for a contract for performance and completion of the Bonded Obligations,
8 through a procurement process approved by the Obligor, arrange for a contract to be prepared for
9 execution by the Obligor and the contractor selected with the Obligor's concurrence, to be secured with
10 performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the
11 Contract Documents, and pay to the Obligor the amount of damages as described in Paragraph 6 of this
12 Bond in excess of the unpaid balance of the O&M Price for the term of this Bond set forth in Paragraph 8
13 incurred by the Obligor resulting from the Principal's default, but not to exceed the Bonded Sum; or

14 d. deliver to Obligor written notice waiving Surety's right to perform the
15 Bonded Obligations of the Principal, to arrange for performance, and to obtain a new contractor, and
16 either, (i) agreeing to pay the amount for which Surety may be liable to the Obligor as soon as practicable
17 after the amount is determined by agreement or otherwise, with interest thereon as provided by law, or
18 (ii) denying liability in whole or in part and explaining all reasons therefor.

19 5. If Surety does not proceed as provided in Paragraph 4 of this Bond with
20 reasonable promptness, Surety shall be deemed to be in default on this Bond ten days after receipt of an
21 additional written notice from the Obligor to Surety demanding that Surety perform its obligations under
22 this Bond, and the Obligor shall be entitled to enforce any remedy available to the Obligor. If Surety
23 proceeds as provided in Subparagraph 4.d of this Bond, and Surety fails to promptly make payment of the
24 full amount due or Surety has denied liability, in whole or in part, then Obligor shall be entitled to enforce
25 any remedy available to the Obligor without further notice.

26 6. If Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the
27 responsibilities of Surety to the Obligor shall not be greater than those of the Principal under the Contract
28 Documents with respect to the Bonded Obligations, and the responsibilities of the Obligor to Surety shall
29 not be greater than those of the Obligor under the Contract Documents with respect to the Bonded
30 Obligations. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the
31 O&M Price for the term of this Bond set forth in Paragraph 8 below to mitigation costs and damages on
32 the Agreement, Surety is obligated without duplication for:

33 a. the responsibilities of the Principal for correction of defective O&M Work
34 and completion of the O&M Work required during such term in accordance with the terms and conditions
35 of the Contract Documents;

36 b. actual damages, including additional legal, design, engineering,
37 professional and delay costs, to the extent available at law, resulting from Principal's default with respect
38 to any of the Bonded Obligations, or resulting from the actions or failure to act of Surety under Paragraph
39 4 of this Bond; and

40 c. all Liquidated Damages and Noncompliance Charges as specified in the
41 Contract Documents that accrue during such term.

1 7. No alteration, modification, amendment or supplement to the Contract
2 Documents or the nature of the O&M Work to be performed thereunder, including without limitation any
3 extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety
4 waives notice of any alteration, modification, amendment, supplement or extension of time.

5 8. [The term of this Bond commences on the Effective Date set forth above and ends
6 upon maturity of the O&M Period; provided that, in no event shall the term of this Bond be beyond the
7 date that is three years after the start of the O&M Period without the express written consent of the
8 Surety; provided, further, that the end of the term of this Bond shall not exonerate Surety from its
9 obligations with respect to any failure of the Principal to perform in accordance with the Contract
10 Documents during the term of this Bond, and this Bond shall be released only upon the satisfaction of the
11 conditions to release set forth in Section 12.2.1(e) of the Agreement. Surety will have no obligation to
12 extend or replace this Bond for additional periods of time.]¹[The term of this Bond commences on the
13 Effective Date set forth above and ends on the two-year anniversary from the Effective Date (as it may be
14 extended pursuant to the following sentence, "Expiration Date"). It is a condition of this Bond that the
15 Expiration Date (and any future Expiration Date by operation of this paragraph) shall automatically be
16 deemed extended for an additional period of one year from the present Expiration Date, unless on or
17 prior to the 60th day prior to such Expiration Date Surety notifies you by registered mail or overnight
18 courier that Surety elects not to extend the Expiration Date of this Bond for such additional one year
19 period; provided that, in no event shall the term of this Bond be beyond the date that is three years after
20 the start of the O&M Period without the express written consent of the Surety; provided, further, that the
21 end of the term of this Bond shall not exonerate Surety from its obligations with respect to any failure of
22 the Principal to perform in accordance with the Contract Documents during the term of this Bond, and
23 this Bond shall be released only upon the satisfaction of the conditions to release set forth in Section
24 12.2.1(e) of the Agreement; provided, further, that failure of the Surety to extend this Bond or failure of
25 the Principal to file a replacement bond shall not constitute a default under this Bond.]²

26 9. Correspondence or claims relating to this Bond should be sent to Surety at the
27 following address:

28 _____
29 _____
30 _____

31 10. No right of action shall accrue on this Bond to or for the use of any entity other
32 than Obligee or its successors and assigns.

33 IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and
34 delivered as of _____, 202__

35 Principal:

36 By: _____

37 Its: _____

¹ Note: Include if this Bond covers the entire duration of the O&M Period per Section 12.2.1(b)(i) of the Agreement.

² Note: Include if this Bond covers the first two years of the O&M Period subject to annual renewals thereafter per Section 12.2.1(b)(ii) of the Agreement.

1 (Seal)
2 Surety: _____
3 By: _____
4 Its: _____
5 (Seal)

6 [ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

By: _____
Name: _____
Title: _____
Address: _____

7

EXHIBIT 9-2

**FORM OF MULTIPLE OBLIGEE RIDER FOR
O&M PERFORMANCE BOND**

I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction)

This Rider is executed concurrently with and shall be attached to and form a part of O&M Performance Bond No. _____ (the "O&M Performance Bond").

WHEREAS, the Arizona Department of Transportation ("ADOT") awarded to Kiewit-Fann Joint Venture, a joint venture formed by and between Kiewit Infrastructure West Co. and Fann Contracting Inc. and validly existing under the laws of the State of Delaware ("Primary Obligee"), a Design-Build-Operate-Maintain Agreement for the I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction) (the "Project"), duly executed and delivered as of October 28, 2021 on the terms and conditions set forth therein; and

WHEREAS, [●] ("Principal") entered into a written agreement bearing the date of _____, 202_ (the "Agreement") with Primary Obligee for Principal's performance of the O&M Work for the Project; and

WHEREAS, Primary Obligee requires that Principal provide the O&M Performance Bond and that ADOT be named as an additional obligee under the O&M Performance Bond; and

WHEREAS, Principal and Surety have agreed to execute and deliver this Rider concurrently with the execution of the O&M Performance Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: ADOT is hereby added to the O&M Performance Bond as a named obligee (the "Ultimate Obligee").

Surety shall not be liable under the O&M Performance Bond to Primary Obligee, Ultimate Obligee, or either of them, unless Primary Obligee, Ultimate Obligee, or either of them, shall make payments to Principal (or in the case Surety arranges for performance of the O&M Work, 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 Obligee shall have occurred and be continuing under the Agreement.

The aggregate liability of Surety under the O&M Performance Bond to Primary Obligee and Ultimate Obligee is limited to the penal sum of the O&M Performance Bond. Ultimate Obligee'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 the defense of breach or default by Primary Obligee under the Agreement shall be available against Ultimate Obligee only if Ultimate Obligee has received notice and 60 days prior opportunity to cure such breach or default, or such longer period to cure as may be reasonable to diligently effect cure. 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 O&M Performance Bond are subordinate in all respects to Ultimate Obligee's rights hereunder. Primary Obligee shall have no right to receive any payments under

1 the O&M Performance Bond and the Surety shall make any and all payments under the O&M Performance
2 Bond to Ultimate Obligee.

3 In the event of a conflict between the O&M Performance Bond and this Rider, this Rider shall govern and
4 control. All references to the O&M Performance Bond, either in the O&M Performance Bond or in this
5 Rider, shall include and refer to the O&M Performance Bond as supplemented and amended by this Rider.
6 Except as herein modified, the O&M Performance Bond shall be and remains in full force and effect.

7 Signed, sealed and dated this____ day of _____, 20__.

8 Principal: [●]

9 By: _____

10 Its: _____

11 (Seal)

12 Surety:

13 By: _____

14 Its: _____

15 (Seal)

1 **EXHIBIT 9-3**

2 **FORM OF O&M PAYMENT BOND**

3 I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction)

4 Bond No. _____

5 Effective Date of Bond: _____

6 WHEREAS, the Arizona Department of Transportation ("Obligee"), has awarded to Kiewit-
7 Fann Joint Venture, a joint venture formed by and between Kiewit Infrastructure West Co. and Fann
8 Contracting Inc. and validly existing under the laws of the State of Delaware ("Principal"), a Design-Build-
9 Operate-Maintain Agreement for the I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction) Project, duly
10 executed and delivered as of October 28, 2021 (the "Agreement"), on the terms and conditions set forth
11 therein; and

12 WHEREAS, Principal is required to furnish a bond (this "Bond") guaranteeing payment of
13 claims in relation to the O&M Work.

14 NOW, THEREFORE, Principal and _____, ("Surety"), holder of
15 a certificate of authority to transact surety business in the State of Arizona, are held and firmly bound
16 unto Obligee in the amount of \$[●] (the "Bonded Sum"), for payment of which sum Principal and Surety
17 jointly and severally firmly bind themselves and their successors and assigns.

18 THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any monies due
19 to any person or entity supplying labor or materials to Principal, the Lead O&M Firm or the Lead O&M
20 Firm's subcontractors during the term of this Bond set forth in Paragraph 5 of this Bond, then Surety shall
21 pay for the same in an amount in the aggregate not to exceed the Bonded Sum; otherwise this Bond shall
22 be null and void upon the occurrence of all of the conditions to release set forth in Section 12.2.2(b) of
23 the Agreement.

24 The following terms and conditions shall apply with respect to this Bond:

25 1. The Contract Documents are incorporated by reference herein. Capitalized terms
26 not separately defined herein have the meanings assigned such terms in the Agreement.

27 2. No alteration, modification, amendment or supplement to the Contract
28 Documents or the nature of the work to be performed thereunder, including without limitation any
29 extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety
30 waives notice of any alteration, modification, amendment, supplement or extension of time.

31 3. Correspondence or claims relating to this Bond should be sent to Surety at the
32 following address:

33 _____
34 _____

4. This Bond shall inure to the benefit of all persons and entities supplying labor or materials to Principal, the Lead O&M Firm or the Lead O&M 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 and ends upon maturity of the O&M Period; provided that in no event shall the term of this Bond be beyond the date that is three years after the start of the O&M Period without the express written consent of the Surety; provided further 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 12.2.2(b) of the Agreement. Surety will have no obligation to extend or replace this Bond for additional periods of time.]³[The term of this Bond commences on the Effective Date set forth above and ends on the two-year anniversary from the Effective Date (as it may be extended pursuant to the following sentence, "Expiration Date"). It is a condition of this Bond that the Expiration Date (and any future Expiration Date by operation of this paragraph) shall automatically be deemed extended for an additional period of one year from the present Expiration Date, unless on or prior to the 60th day prior to such Expiration Date Surety notifies you by registered mail or overnight courier that Surety elects not to extend the Expiration Date of this Bond for such additional one year period; provided that, in no event shall the term of this Bond be beyond the date that is three years after the start of the O&M Period without the express written consent of the Surety; provided, further, 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 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 the satisfaction of the conditions to release set forth in Section 12.2.1(e) of the Agreement; provided, further, that 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.]⁴

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 202__.

Principal:

By: _____
Its: _____
(Seal)

Surety:

³ Note: Include if this Bond covers the entire duration of the O&M Period per Sections 12.2.1(b)(i) and 12.2.2(a) of the Agreement.

⁴ Note: Include if this Bond covers the first two years of the O&M Period subject to annual renewals thereafter per Sections 12.2.1(b)(ii) and 12.2.2(a) of the Agreement.

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By: _____
Its: _____
(Seal)

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[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

By: _____
Name: _____
Title: _____
Address: _____

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EXHIBIT 9-4

**FORM OF MULTIPLE OBLIGEE RIDER FOR
O&M PAYMENT BOND**

I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction)

This Rider is executed concurrently with and shall be attached to and form a part of O&M Payment Bond No. _____ (the "O&M Payment Bond").

WHEREAS, the Arizona Department of Transportation ("ADOT") awarded to Kiewit-Fann Joint Venture, a joint venture formed by and between Kiewit Infrastructure West Co. and Fann Contracting Inc. under the laws of the State of Delaware ("Primary Oblige", a Design-Build-Operate-Maintain Agreement for the I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction) (the "Project"), duly executed and delivered as of October 28, 2021 on the terms and conditions set forth therein; and

WHEREAS, [●] ("Principal") entered into a written agreement bearing the date of _____, 202_ (the "Agreement") with Primary Oblige for Principal's performance of the O&M Work for the Project; and

WHEREAS, Primary Oblige requires that Principal provide the O&M Payment Bond and that ADOT be named as an additional obligee under the O&M Payment Bond; and

WHEREAS, Principal and Surety have agreed to execute and deliver this Rider concurrently with the execution of the O&M Payment Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows: ADOT is hereby added to the O&M Payment Bond as a named obligee (the "Ultimate Oblige").

Surety shall not be liable under the O&M 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 O&M Work, 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 O&M Payment Bond to Primary Oblige and Ultimate Oblige is limited to the penal sum of the O&M 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 the defense of breach or default by Primary Oblige under the Agreement shall be available against Ultimate Oblige only if Ultimate Oblige has received notice and 60 days prior opportunity to cure such breach or default, or such longer period to cure as may be reasonable to diligently effect cure. The total liability of Surety shall in no event exceed the amount recoverable from Principal by Primary Oblige under the Agreement.

The rights of Primary Oblige under the O&M Payment Bond are subordinate to Ultimate Oblige's rights hereunder. Primary Oblige shall have no right to receive any payments under the O&M Payment Bond and Surety shall make any and all payments under the D&C Payment Bond to Ultimate Oblige.

1 In the event of a conflict between the O&M Payment Bond and this Rider, this Rider shall govern and
2 control. All references to the O&M Payment Bond, either in the O&M Payment Bond or in this Rider, shall
3 include and refer to the O&M Payment Bond as supplemented and amended by this Rider. Except as
4 herein modified, the O&M Payment Bond shall be and remains in full force and effect.

5 Signed, sealed and dated this ____ day of _____, 20__.

6 Principal:

[●]

7 By: _____

8 Its: _____

9 (Seal)

11 Surety:

12 By: _____

13 Its: _____

14 (Seal)

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EXHIBIT 10
GUARANTY FORMS

Exhibit 10-1	Form of D&C Guaranty
Exhibit 10-2	Form of O&M Guaranty

1 **EXHIBIT 10-1**

2 **FORM OF D&C GUARANTY**

3 THIS GUARANTY (this "Guaranty") is made as of October 28, 2021 by KIEWIT
4 INFRASTRUCTURE GROUP INC., a corporation incorporated in the State of Delaware ("Guarantor"), in
5 favor of the ARIZONA DEPARTMENT OF TRANSPORTATION, an agency of the State of Arizona ("ADOT").

6 **RECITALS**

7 A. Kiewit-Fann Joint Venture, as developer ("Developer"), and ADOT are parties to that
8 certain Design-Build-Operate-Maintain Agreement (the "Agreement") pursuant to which Developer has
9 agreed to design, construct, operate and maintain the Project. Capitalized terms used herein without
10 definitions will have their respective meanings given to such terms in the Agreement.

11 B. Developer is a joint venture formed by and between Kiewit Infrastructure West Co.
12 and Fann Contracting Inc. under the laws of the State of Delaware. The Guarantor is the parent company
13 of Kiewit Infrastructure West Co. The execution of the Agreement by ADOT and the consummation of the
14 transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, ADOT would
15 not have entered into the Agreement with Developer.

16 **NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other good and
17 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees
18 as follows:

19 **1. Guaranty.** Guarantor guarantees to ADOT and its successors and assigns the full
20 and prompt payment and performance when due of all of the obligations of Developer arising out of, in
21 connection with, under or related to (a) the D&C Work under the Contract Documents and (b) the O&M
22 Work under the Contract Documents solely until the O&M Bonds and, as applicable, the O&M Guaranty
23 have been provided by Developer as required in accordance with Sections 12.2 and 12.7 of the
24 Agreement. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as
25 the "Guaranteed Obligations."

26 **2. Unconditional Obligations.** This Guaranty is a guarantee of payment and
27 performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute,
28 unconditional and irrevocable guarantee of the full and prompt payment and performance when due of
29 all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter
30 increased or incurred, and whether or not enforceable against Developer. If any payment made by
31 Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set
32 aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid
33 or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and
34 remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that
35 this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the
36 Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without
37 limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released,
38 discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations
39 thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their
40 respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may

1 have against ADOT, whether in connection with this Guaranty or any unrelated transaction, provided that
2 nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of
3 any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional
4 guarantee irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed
5 Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed
6 Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any
7 collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided
8 in Section 21.

9 **3. Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are
10 independent of the obligations of Developer and if any default occurs hereunder, a separate action or
11 actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein.
12 ADOT may maintain successive actions for other defaults of Guarantor. ADOT's rights hereunder will not
13 be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of
14 successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

15 a. Guarantor agrees that ADOT may enforce this Guaranty, at any time and
16 from time to time, without the necessity of resorting to or exhausting any security or collateral and
17 without the necessity of proceeding against Developer. Guarantor hereby waives the right to require
18 ADOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents
19 or to pursue any other remedy or to enforce any other right.

20 b. Guarantor will continue to be subject to this Guaranty notwithstanding:
21 (i) any modification, agreement or stipulation between Developer and ADOT or their respective
22 successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations;
23 (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the
24 Contract Documents or any modification thereof; (iii) any release of Developer from any liability with
25 respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held
26 by ADOT as security for the performance by Developer of the Guaranteed Obligations.

27 c. The Guaranteed Obligations are not conditional or contingent upon the
28 genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by ADOT
29 of any remedies which ADOT either now has or may hereafter have with respect thereto under any of the
30 Contract Documents.

31 d. Notwithstanding anything to the contrary contained elsewhere in this
32 Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the
33 obligations of the Developer under the Agreement. Accordingly, in the event that the Developer's
34 obligations are changed by any modification, agreement or stipulation between Developer and ADOT or
35 their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so
36 changed.

37 **4. Liability of Guarantor.**

38 a. ADOT may enforce this Guaranty upon the occurrence of a breach by
39 Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between
40 ADOT and Developer with respect to the existence of such a breach.

1 b. Guarantor's performance of some, but not all, of the Guaranteed
2 Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed
3 Obligations that have not been performed.

4 c. ADOT, upon such terms as it deems appropriate, without notice or
5 demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction,
6 limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may
7 (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew,
8 extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms
9 of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of
10 the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept
11 or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or
12 any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations
13 and take and hold security for the payment and performance of this Guaranty or the Guaranteed
14 Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter,
15 subordinate or modify, with or without consideration, any security for performance of the Guaranteed
16 Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person
17 with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for
18 the benefit of ADOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or
19 manner of sale thereof, or exercise any other right or remedy that ADOT may have against any such
20 security, as ADOT in its sole discretion may determine, and (vi) exercise any other rights available to it
21 under the Contract Documents.

22 d. This Guaranty and the obligations of Guarantor hereunder will be valid
23 and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination
24 for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including
25 without limitation the occurrence of any of the following, whether or not Guarantor will have had notice
26 or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not
27 to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the
28 exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under
29 the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or
30 any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of,
31 or any consent to departure from, any of the terms or provisions (including without limitation provisions
32 relating to events of default) of the Contract Documents or any agreement or instrument executed
33 pursuant thereto; (iii) ADOT's consent to the change, reorganization or termination of the corporate
34 structure or existence of Developer; or (iv) any defenses, set-offs or counterclaims that Developer may
35 allege or assert against ADOT in respect of the Guaranteed Obligations, except as provided in Section 21.

36 **5. Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and
37 agrees not to assert or take advantage of: (a) any right to require ADOT to proceed against Developer or
38 any other Person or to proceed against or exhaust any security held by ADOT at any time or to pursue any
39 right or remedy under any of the Contract Documents or any other remedy in ADOT's power before
40 proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of
41 authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the
42 failure of ADOT to file or enforce a claim against the estate (either in administration, bankruptcy or any
43 other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment,
44 demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;
45 (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 venture members 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 venture members of Developer to Guarantor without the prior written consent of ADOT. Any payment by Developer or any shareholders, partners, members, joint venture members 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 unconditionally and irrevocably 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; and

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; and

(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.

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:

1 a. it is a corporation duly organized, validly existing, and in good standing
2 under the laws of the State of Delaware and is not engaged in the conduct of business in the State of
3 Arizona and therefore has not qualified to do business in the State of Arizona;

4 b. it has all requisite corporate power and authority to execute, deliver and
5 perform this Guaranty;

6 c. the execution, delivery, and performance by Guarantor of this Guaranty
7 have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such
8 authorization will be provided with the execution of this Guaranty;

9 d. this Guaranty has been duly executed and delivered and constitutes the
10 legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its
11 terms;

12 e. neither the execution nor delivery of this Guaranty nor compliance with
13 or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach
14 or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default,
15 or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the
16 certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract,
17 agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization,
18 right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which
19 Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable
20 to Guarantor;

21 f. it now has and will continue to have full and complete access to any and
22 all information concerning the transactions contemplated by the Contract Documents or referred to
23 therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed
24 Obligations;

25 g. it has reviewed and approved copies of the Contract Documents and is
26 fully informed of the remedies ADOT may pursue, with or without notice to Developer or any other
27 Person, in the event of default of any of the Guaranteed Obligations;

28 h. it has made and so long as the Guaranteed Obligations (or any portion
29 thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully
30 informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed
31 Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the
32 Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of ADOT to
33 disclose any matter, fact or thing relating to the business, operations or conditions of Developer now
34 known or hereafter known by ADOT;

35 i. no consent, authorization, approval, order, license, certificate, or permit
36 or act of or from, or declaration or filing with, any governmental authority or any party to any contract,
37 agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is
38 required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have
39 been obtained prior to the date hereof;

1 j. there is no pending or, to the best of its knowledge, threatened action,
2 suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which
3 challenges the validity or enforceability of this Guaranty; and

4 k. this Guaranty is not and will not be subordinated to any present and
5 future unsecured obligations of the Guarantor.

6 **10. Governing Law.** The validity, interpretation and effect of this Guaranty are
7 governed by and will be construed in accordance with the laws of the State of Arizona applicable to
8 contracts made and performed in such State and without regard to conflicts of law doctrines except to
9 the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of
10 the State of Arizona with regard to this Guaranty. The venue for any action regarding this Guaranty shall
11 be Maricopa County, Arizona.

12 **11. Entire Document.** This Guaranty contains the entire agreement of Guarantor with
13 respect to the transactions contemplated hereby, and supersede all negotiations, representations,
14 warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with
15 respect to the subject matter hereof. No waiver, modification or amendment of any provision of this
16 Guaranty is effective unless made in writing and duly signed by ADOT referring specifically to this
17 Guaranty, and then only to the specific purpose, extent and interest so provided.

18 **12. Severability.** If any provision of this Guaranty is determined to be unenforceable
19 for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the
20 intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and
21 enforceable to the greatest extent possible.

22 **13. Notices.** Any communication, notice or demand of any kind whatsoever under this
23 Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt
24 requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or
25 (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by
26 telephone, addressed as follows:

27 If to ADOT: ARIZONA DEPARTMENT OF TRANSPORTATION
28 206 17th Avenue
29 Phoenix, AZ 85007
30 Attention: Annette Riley
31 E-mail: ariley@azdot.gov

32 With copies to: Office of the Arizona Attorney General
33 Transportation Section
34 2005 N. Central Avenue
35 Phoenix, AZ 85004
36 Telephone: (602) 542-1680
37 E-mail: transportation@azag.gov
38 Facsimile: (602) 542-3646

If to Guarantor: Kiewit Infrastructure Group Inc.
1550 Mike Fahey Street
Omaha, NE 68102
Attention: Tobin Schropp
Telephone : (402) 342-2052
Email: toby.schropp@kiewit.com

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.

1 b. Guarantor acknowledges and agrees that any interest on any portion of the
2 Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause
3 (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of
4 law by reason of the commencement of said proceeding, such interest as would have accrued on such
5 portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in
6 the Guaranteed Obligations because it is the intention of Guarantor and ADOT that the Guaranteed
7 Obligations should be determined without regard to any rule of law or order which may relieve Developer
8 of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver,
9 debtor in possession, assignee for the benefit of creditors or any similar person to pay ADOT, or allow the
10 claim of ADOT in respect of, any such interest accruing after the date on which such proceeding is
11 commenced.

12 **19. Attorneys' Fees.** Guarantor agrees to pay to ADOT without demand reasonable
13 attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration
14 and bankruptcy, and including appeals) incurred by ADOT in enforcing, collecting or compromising any
15 Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do
16 any or all of the foregoing.

17 **20. Joint and Several Liability.** If the Guarantor is comprised of more than one
18 individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable
19 for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and
20 the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other
21 guarantors with respect to the obligations guaranteed under such guaranties.

22 **21. Defenses.** Notwithstanding any other provision to the contrary, Guarantor shall be
23 entitled to the benefit of all rights and defenses available to Developer under the Agreement except (a)
24 those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and
25 any other defense to formation of the Agreement, and (c) defenses available to Developer under any
26 federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors.

27 [SIGNATURES ON NEXT PAGE]
28

1 IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written
2 above.

3 KIEWIT INFRASTRUCTURE GROUP INC.

4
5 By: _____
6 Name: David J. Miles
7 Title: Executive Vice President

8
9 By: _____
10 Name: J. Samuel Gilmore
11 Title: Assistant Secretary

1 **EXHIBIT 10-2**

2 **FORM OF O&M GUARANTY**

3 THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by KIEWIT
4 INFRASTRUCTURE GROUP INC., a corporation incorporated in the State of Delaware ("Guarantor"), in
5 favor of the ARIZONA DEPARTMENT OF TRANSPORTATION, an agency of the State of Arizona ("ADOT").

6 **RECITALS**

7 A. Kiewit-Fann Joint Venture, as developer ("Developer"), and ADOT are parties to
8 that certain Design-Build-Operate-Maintain Agreement (the "Agreement") pursuant to which Developer
9 has agreed to design, construct, operate and maintain the Project. Capitalized terms used herein without
10 definitions will have their respective meanings given to such terms in the Contract Documents.

11 B. Developer is a joint venture formed by and between Kiewit Infrastructure West
12 Co. and Fann Contracting Inc. under the laws of the State of Delaware. The Guarantor is a parent company
13 of Kiewit Infrastructure West Co. The execution of the Agreement by ADOT and the consummation of the
14 transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, ADOT would
15 not have entered into the Agreement with Developer.

16 **NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other good and
17 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees
18 as follows:

19 **1. Guaranty.** Guarantor guarantees to ADOT and its successors and assigns the full
20 and prompt payment and performance when due of all of the obligations of Developer arising out of, in
21 connection with, under or related to the O&M Work under the Contract Documents. The obligations
22 guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

23 **2. Unconditional Obligations.** This Guaranty is a guarantee of payment and
24 performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute,
25 unconditional and irrevocable guarantee of the full and prompt payment and performance when due of
26 all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter
27 increased or incurred, and whether or not enforceable against Developer. If any payment made by
28 Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set
29 aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid
30 or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and
31 remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that
32 this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the
33 Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without
34 limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released,
35 discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations
36 thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their
37 respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may
38 have against ADOT, whether in connection with this Guaranty or any unrelated transaction, provided that
39 nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of
40 any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional

1 guarantee irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed
2 Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed
3 Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any
4 collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided
5 in Section 21.

6 **3. Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are
7 independent of the obligations of Developer and if any default occurs hereunder, a separate action or
8 actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein.
9 ADOT may maintain successive actions for other defaults of Guarantor. ADOT's rights hereunder will not
10 be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of
11 successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

12 a. Guarantor agrees that ADOT may enforce this Guaranty, at any time and
13 from time to time, without the necessity of resorting to or exhausting any security or collateral and
14 without the necessity of proceeding against Developer. Guarantor hereby waives the right to require
15 ADOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents
16 or to pursue any other remedy or to enforce any other right.

17 b. Guarantor will continue to be subject to this Guaranty notwithstanding:
18 (i) any modification, agreement or stipulation between Developer and ADOT or their respective
19 successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations;
20 (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the
21 Contract Documents or any modification thereof; (iii) any release of Developer from any liability with
22 respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held
23 by ADOT as security for the performance by Developer of the Guaranteed Obligations.

24 c. The Guaranteed Obligations are not conditional or contingent upon the
25 genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by ADOT
26 of any remedies which ADOT either now has or may hereafter have with respect thereto under any of the
27 Contract Documents.

28 d. Notwithstanding anything to the contrary contained elsewhere in this
29 Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the
30 obligations of the Developer under the Agreement. Accordingly, in the event that the Developer's
31 obligations are changed by any modification, agreement or stipulation between Developer and ADOT or
32 their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so
33 changed.

34 **4. Liability of Guarantor.**

35 a. ADOT may enforce this Guaranty upon the occurrence of a breach by
36 Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between
37 ADOT and Developer with respect to the existence of such a breach.

38 b. Guarantor's performance of some, but not all, of the Guaranteed
39 Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed
40 Obligations that have not been performed.

1 c. ADOT, upon such terms as it deems appropriate, without notice or
2 demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction,
3 limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may
4 (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew,
5 extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms
6 of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of
7 the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept
8 or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or
9 any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations
10 and take and hold security for the payment and performance of this Guaranty or the Guaranteed
11 Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter,
12 subordinate or modify, with or without consideration, any security for performance of the Guaranteed
13 Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person
14 with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for
15 the benefit of ADOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or
16 manner of sale thereof, or exercise any other right or remedy that ADOT may have against any such
17 security, as ADOT in its discretion may determine, and (vi) exercise any other rights available to it under
18 the Contract Documents.

19 d. This Guaranty and the obligations of Guarantor hereunder will be valid
20 and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination
21 for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including
22 without limitation the occurrence of any of the following, whether or not Guarantor will have had notice
23 or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not
24 to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the
25 exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under
26 the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or
27 any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of,
28 or any consent to departure from, any of the terms or provisions (including without limitation provisions
29 relating to events of default) of the Contract Documents or any agreement or instrument executed
30 pursuant thereto; (iii) ADOT's consent to the change, reorganization or termination of the corporate
31 structure or existence of Developer; or (iv) any defenses, set-offs or counterclaims that Developer may
32 allege or assert against ADOT in respect of the Guaranteed Obligations, except as provided in Section 21.

33 **5. Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and
34 agrees not to assert or take advantage of: (a) any right to require ADOT to proceed against Developer or
35 any other Person or to proceed against or exhaust any security held by ADOT at any time or to pursue any
36 right or remedy under any of the Contract Documents or any other remedy in ADOT's power before
37 proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of
38 authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the
39 failure of ADOT to file or enforce a claim against the estate (either in administration, bankruptcy or any
40 other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment,
41 demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;
42 (d) any right or defense arising out of an election of remedies by ADOT even though the election of
43 remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has
44 destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation
45 of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to,
46 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 venture members 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 venture members of Developer to Guarantor without the prior written consent of ADOT. Any payment by Developer or any shareholders, partners, members, joint venture members 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 unconditionally and irrevocably 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; and

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; and

(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.

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 Delaware and [select whichever is applicable] [is qualified to do business

1 and is in good standing under the laws of the State of Arizona] [is not engaged in the conduct of business
2 in the State of Arizona and therefore has not qualified to do business in the State of Arizona];

3 b. it has all requisite corporate power and authority to execute, deliver and
4 perform this Guaranty;

5 c. the execution, delivery, and performance by Guarantor of this Guaranty
6 have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such
7 authorization will be provided with the execution of this Guaranty;

8 d. this Guaranty has been duly executed and delivered and constitutes the
9 legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its
10 terms;

11 e. neither the execution nor delivery of this Guaranty nor compliance with
12 or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach
13 or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default,
14 or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the
15 certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract,
16 agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization,
17 right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which
18 Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable
19 to Guarantor;

20 f. it now has and will continue to have full and complete access to any and
21 all information concerning the transactions contemplated by the Contract Documents or referred to
22 therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed
23 Obligations;

24 g. it has reviewed and approved copies of the Contract Documents and is
25 fully informed of the remedies ADOT may pursue, with or without notice to Developer or any other
26 Person, in the event of default of any of the Guaranteed Obligations;

27 h. it has made and so long as the Guaranteed Obligations (or any portion
28 thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully
29 informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed
30 Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the
31 Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of ADOT to
32 disclose any matter, fact or thing relating to the business, operations or conditions of Developer now
33 known or hereafter known by ADOT;

34 i. no consent, authorization, approval, order, license, certificate, or permit
35 or act of or from, or declaration or filing with, any governmental authority or any party to any contract,
36 agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is
37 required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have
38 been obtained prior to the date hereof;

1 j. there is no pending or, to the best of its knowledge, threatened action,
2 suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which
3 challenges the validity or enforceability of this Guaranty; and

4 k. this Guaranty is not and will not be subordinated to any present and
5 future unsecured obligations of the Guarantor.

6 **10. Governing Law.** The validity, interpretation and effect of this Guaranty are
7 governed by and will be construed in accordance with the laws of the State of Arizona applicable to
8 contracts made and performed in such State and without regard to conflicts of law doctrines except to
9 the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of
10 the State of Arizona with regard to this Guaranty. The venue for any action regarding this Guaranty shall
11 be Maricopa County, Arizona.

12 **11. Entire Document.** This Guaranty contains the entire agreement of Guarantor with
13 respect to the transactions contemplated hereby, and supersede all negotiations, representations,
14 warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with
15 respect to the subject matter hereof. No waiver, modification or amendment of any provision of this
16 Guaranty is effective unless made in writing and duly signed by ADOT referring specifically to this
17 Guaranty, and then only to the specific purpose, extent and interest so provided.

18 **12. Severability.** If any provision of this Guaranty is determined to be unenforceable
19 for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the
20 intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and
21 enforceable to the greatest extent possible.

22 **13. Notices.** Any communication, notice or demand of any kind whatsoever under
23 this Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt
24 requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or
25 (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by
26 telephone, addressed as follows:

27 If to ADOT: ARIZONA DEPARTMENT OF TRANSPORTATION
28 206 17th Avenue
29 Phoenix, AZ 85007
30 Attention: Annette Riley
31 E-mail: ariley@azdot.gov

32 With copies to: Office of the Arizona Attorney General
33 Transportation Section
34 2005 N. Central Avenue
35 Phoenix, AZ 85004
36 Telephone: (602) 542-1680
37 E-mail: transportation@azag.gov
38 Facsimile: (602) 542-3646

If to Guarantor: Kiewit Infrastructure Group Inc.
1550 Mike Fahey Street
Omaha, NE 68102
Attention: David J. Miles
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 guarantee is executed with respect to Developer and the Project, each guarantor under such a guarantee 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]

1 IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written
2 above.

3

4 By: _____
5 Name: _____
6 Title: _____

7

8 By: _____
9 Name: _____
10 Title : _____

11

1 **EXHIBIT 11**

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 Project
6 Substantial Completion, Developer shall procure and keep in force, or cause to be procured and kept in
7 force, a policy of builder's risk insurance as specified below.

8 (a) The policy shall provide coverage for "all risks" of direct physical loss or damage
9 to the portions or elements of the Project under construction, including the perils of earthquake, earth
10 movement, flood, storm, tempest, windstorm, hurricane, subsidence, and terrorism; shall contain
11 extensions of coverage that are typical for a project of the nature of the Project; and shall contain only
12 those exclusions that are typical for a project of the nature of the Project. The policy may exclude
13 coverage of physical loss or damage caused by third parties that are not Developer-Related Entities.

14 (b) The policy shall cover (i) all property, roads, buildings, structures, fixtures,
15 materials, supplies, foundations, pilings, machinery and equipment to be incorporated into the Project
16 that are part of or related to the portions or elements of the Project under construction, and the works of
17 improvement, including permanent and temporary works and materials, and including goods intended
18 for incorporation into the works located at the Site, in storage or in the course of inland transit on land to
19 the Site, (ii) unless covered by commercial general liability insurance pursuant to Section 3 of this Exhibit
20 11, all existing property and improvements that are within the construction work zone and are or will be
21 affected by the Construction Work, provided, however, that the policy may include a sublimit of not less
22 than \$5,000,000 per occurrence for the property of others; (iii) unless covered by a property insurance
23 policy of Developer approved by ADOT, the collocated office and ADOT's field office as described in
24 Sections GP 110.05.2 and GP 110.05.3 of the Technical Provisions, all areas appurtenant thereto, and all
25 personal property (including office equipment), trade fixtures and Developer- or ADOT-owned alterations
26 and utility installations therein; and (iv) valuable papers and restoration of data, plans and drawings.

27 (c) The policy shall provide coverage per occurrence of not less than \$200,000,000
28 of the covered property loss without risk of co-insurance; provided, however, that the policy may also
29 include the following sublimits: (i) for earth movement and flood, not less than \$5,000,000 per occurrence
30 and in the aggregate; (ii) for existing property improvements, not less than \$5,000,000 per occurrence;
31 (iii) for building ordinance compliance and increased replacement cost due to any change in applicable
32 codes or other Laws, not less than \$10,000,000 per occurrence; (iv) for "soft cost expense," as described
33 in subsection (e)(xi) below, not less than \$5,000,000 per occurrence; (v) for professional fees, not less than
34 \$1,000,000 per occurrence; (vi) for demolition and debris removal, not less than \$50,000,000 per
35 occurrence or 25% of the amount of physical loss or damage to the insured property, whichever is less;
36 and (vii) for goods in storage or in the course of inland transit, not less than \$5,000,000 per occurrence.

37 (d) Developer and ADOT shall be the named insureds on the policy. If ADOT is not a
38 named insured on the policy, ADOT shall be named as an additional insured on the policy, as its interests
39 may appear. Developer also may, but is not obligated to, include other Subcontractors as named insured
40 as their respective interests appear and subject to Sections 13.1.7 and 13.1.8 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%.

(g) Any loss covered by applicable insurance is to be adjusted with a claims adjuster approved by ADOT, and payable to the State of Arizona, Arizona Department of Transportation Risk Management, attention Litigation and Claims Unit, as its interests may appear. Developer shall pay each Subcontractor a proportionate share of any insurance monies received by Developer. Each further Subcontract shall require each Subcontractor to make payments to its subcontractors in a similar manner.

2. Builder's Risk Insurance During the O&M Period

If Non-Routine Maintenance Work will entail construction or reconstruction that either has an estimated cost at or above \$250,000 or presents, in ADOT's opinion, material risk of harm or loss to property and improvements that may be affected by the Work, then 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 or reconstruction, 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 or reconstruction work; and shall contain only those exclusions that are typical for the nature of the construction or reconstruction work (including the sublimits noted below). The policy may exclude coverage of physical loss or damage caused by third parties that are not Developer-Related Entities.

(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 or reconstruction, including all existing property and improvements that are within the construction or reconstruction work zone and are or will be affected by the Work, and (ii) machinery and equipment that are part of or in the course of the construction.

(c) The policy shall provide coverage per occurrence sufficient to reinstate the insured property for a limit not less than the probable maximum loss, without risk of co-insurance; provided, however, that the policy may also include the sublimits set forth in clause (e) below and a sublimit for existing property improvements of not less than \$5,000,000 per occurrence. Developer and its insurance consultant, or the insurer, shall perform the probable maximum loss analysis using industry

1 standard underwriting practices. The probable maximum loss analysis and recommended policy limit
2 based thereon shall be subject to the review and comment by ADOT to verify reasonableness under
3 industry standard underwriting practices, prior to issuance of the policy or renewal of any policy.

4 (d) Developer and ADOT shall be the named insureds on the policy. If ADOT is not a
5 named insured on the policy, ADOT shall be named as an additional insured on the policy, as its interests
6 may appear. Developer also may, but is not obligated to, include other Subcontractors as named insured
7 as their respective interests appear and subject to Sections 13.1.7 and 13.1.8 of the Agreement.

8 (e) The policy shall include coverage for (i) foundations, including pilings, but
9 excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery
10 accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent
11 defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty
12 work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, using
13 form LEG 3 or equivalent, (v) physical damage resulting from design error or omission but excluding the
14 cost of making good such design error or omission, (vi) physical damage resulting from mechanical
15 breakdown or electrical apparatus breakdown, (vii) demolition and debris removal coverage, which may
16 be subject to a sublimit of at least \$25,000,000 if the general policy limit is higher, (viii) the increased
17 replacement cost due to any change in applicable codes or other Laws, (ix) expense to reduce loss, (x)
18 building ordinance compliance, with the building ordinance exclusion deleted, and (xi) "soft cost expense"
19 (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs
20 associated with such damage or loss or replacement thereof), which may be subject to a sublimit of at
21 least \$5,000,000 if the general policy limit is higher. If the general policy limit is higher, then coverages
22 (viii) and (x) may be subject to an aggregate sublimit of at least \$10,000,000.

23 (f) The policy shall provide a deductible or self-insured retention not exceeding
24 \$1,000,000 per occurrence; provided however, for the perils of windstorm, flood and earthquake, the
25 deductible may be expressed as a percentage of the policy limit not to exceed 5%.

26 (g) Any loss covered by applicable insurance is to be adjusted with a claims adjuster
27 approved by ADOT, and payable to the State of Arizona, Arizona Department of Transportation Risk
28 Management, attention Litigation and Claims Unit, as its interests may appear. Developer shall pay each
29 Subcontractor a proportionate share of any insurance monies received by Developer. Each further
30 Subcontract shall require each Subcontractor to make payments to its subcontractors in a similar manner.

31 **3. Commercial General Liability Insurance During the D&C Period**

32 At all times during the D&C Period, Developer shall procure and keep in force, or cause to be
33 procured and kept in force, in its own name, commercial general liability insurance as specified below,
34 which may be provided through a combination of primary and following-form umbrella or excess policies
35 as provided in Section 13.1.16 of the Agreement.

36 (a) The policy shall be in form reasonably acceptable to ADOT, and shall be an
37 occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature
38 of this Project, and shall contain only those exclusions that are typical for a project of the nature of this
39 Project.

40 (b) The policy shall insure against the legal liability of the insureds named in Section
41 4(d) of this Exhibit 11, relating to claims by third parties for accidental death, bodily injury or illness,

1 property damage, personal injury and advertising injury, and shall include the following specific coverages:

2 (i) Contractual liability;

3 (ii) Premises/operations;

4 (iii) Independent contractors;

5 (iv) Products and completed operations coverage with an extended
6 reporting period until expiration of the statute of repose set forth at Arizona Revised
7 Statutes, Section 12-552 (with acknowledgement that the Project constitutes the
8 premises and not a product), provided that Developer may satisfy the products and
9 completed operations coverage by annually renewing its corporate general liability
10 policy until the expiration of the statute of repose;

11 (v) Broad form property damage, providing the same or equivalent
12 coverage as ISO form CG 00 01 10 93 provides;

13 (vi) Hazards commonly referred to as "XCU", including losses from
14 explosion, collapse or underground damage;

15 (vii) Fellow employee coverage for supervisory personnel;

16 (viii) Incidental medical malpractice;

17 (ix) No exclusion for work performed within 50 feet of a railroad;

18 (x) No exclusion for claims arising from Professional Services except
19 for CG 22 80 04 13 or its equivalent;

20 (xi) Broad named insured endorsement; and

21 (xii) Hired/non-owned automobile liability, unless covered by the
22 automobile liability policy pursuant to Section 5 of this Exhibit 11.

23 (c) The policy shall have limits meeting one of the following, as selected by
24 Developer:

25 (i) Not less than \$100,000,000 per occurrence and in the aggregate,
26 with the aggregate limit reinstating once during the D&C Period; or

27 (ii) Not less than \$40,000,000 per occurrence and in the aggregate,
28 with the aggregate reinstating annually.

29 (d) The aggregate must apply either specifically for this Project or on a per project
30 basis except for the aggregate limit for completed operations, which shall be a single aggregate and need
31 not be project-specific. Developer may satisfy the project specific or per project aggregate requirement
32 via an ISO form CG 25 03 endorsement to a corporate commercial general liability policy. Such limits shall
33 be shared by all insureds and additional insured parties.

(e) 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.

(f) The policy shall contain a waiver of subrogation in favor of ADOT and the Indemnified Parties, using ISO form CG 24 04 05 09 endorsement or its equivalent.

(g) The policy shall provide that the insurance afforded the Developer shall be primary and that any insurance carried by ADOT, its agents, officials, employees or the State of Arizona shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621 (E), via ISO form CG 20 01 04 13 or its equivalent.

(h) The policy shall provide a deductible or self-insured retention not to exceed \$1,000,000 per occurrence.

(i) The liability coverage shall include occurrences at or involving the collocated office and ADOT's field offices as described in Sections GP 110.05.2 and GP 110.05.3 of the Technical Provisions, and all areas appurtenant thereto.

4. Commercial General Liability Insurance During the O&M Period

At all times during the O&M Period, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 13.1.16 of the Agreement.

(a) The policy shall be in form reasonably acceptable to ADOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 4(d) of this Exhibit 11, relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations coverage for claims made within an extended reporting period of eight years after substantial completion of any work of installation, construction, reconstruction, replacement or other capital improvement performed during the policy period (with acknowledgement that the Project constitutes the premises and not a product), provided that Developer may satisfy the products and completed operations coverage by annually renewing its corporate general liability policy until the expiration of the eight-year extended reporting period;

1 (v) Broad form property damage, providing the same or equivalent
2 coverage as ISO form CG 00 01 10 93 provides;

3 (vi) Hazards commonly referred to as "XCU", including losses from
4 explosion, collapse or underground damage;

5 (vii) Fellow employee coverage for supervisory personnel;

6 (viii) Incidental medical malpractice;

7 (ix) No exclusion for work performed within 50 feet of a railroad;

8 (x) No exclusion for claims arising from Professional Services except
9 for CG 22 80 04 13 or its equivalent;

10 (xi) Broad named insured endorsement; and

11 (xii) Hired/non-owned automobile liability, unless covered by the
12 automobile liability policy pursuant to Section 5 of this Exhibit 11.

13 (c) The policy shall have limits of not less than \$10,000,000 per occurrence and in
14 the aggregate, with limits reinstating annually, with the aggregate applicable either specifically for this
15 Project or on a per project basis except for the aggregate limit for completed operations, which shall be a
16 single aggregate and need not be project-specific. Developer may satisfy the project specific or per project
17 aggregate requirement via an ISO form CG 25 03 05 09 endorsement to a corporate commercial general
18 liability policy.

19 (d) ADOT and the Indemnified Parties shall be named as additional insureds, using
20 ISO form CG 20 10 04 13, and ISO form CG 20 37 04 13 or their equivalent, subject to the provisions of
21 Section 13.1.7 and 13.1.8 of the Agreement. The policy shall be written so that no act or omission of a
22 named insured shall vitiate coverage of the other named insureds and the additional insureds.

23 (e) The policy shall contain a waiver of subrogation in favor of ADOT and the
24 Indemnified Parties, using ISO form CG 24 04 05 09 endorsement or its equivalent.

25 (f) The policy shall provide that the insurance afforded the Developer shall be
26 primary and that any insurance carried by ADOT, its agents, officials, employees or the State of Arizona
27 shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621 (E), via ISO for CG 20 01 04
28 13 or its equivalent.

29 (g) The policy shall provide a deductible or self-insured retention not to exceed
30 \$1,000,000 per occurrence.

31 (h) The liability coverage shall include occurrences at or involving the collocated
32 office and ADOT's field offices as described in Sections GP 110.05.2 and GP 110.05.3 of the Technical
33 Provisions, and all areas appurtenant thereto.

1 **5. Automobile Liability Insurance**

2 At all times during the performance of the Work and during the Term, Developer shall procure
3 and keep in force comprehensive, business or commercial automobile liability insurance as specified
4 below, which may be provided through a combination of primary and following-form umbrella or excess
5 policies as provided in Section 13.1.16 of the Agreement.

6 (a) Each policy shall cover accidental death, bodily injury and property damage
7 liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles
8 connected with performance of the Work, including loading and unloading. The policy shall contain
9 extensions of coverage that are typical for a project of the nature of the Project, and shall contain only
10 those exclusions that are typical for a project of the nature of the Project.

11 (b) Developer shall be the named insured under its automobile liability policy. ADOT
12 and the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,
13 officials, agents, and employees shall be named as additional insureds using ISO form CA 04 44 03 10 or
14 its equivalent and subject to the provisions of Section 13.1.7 and 13.1.8 of the Agreement.

15 (c) The Policy shall contain a waiver of subrogation in favor of ADOT and the
16 Indemnified Parties, using ISO form CA 04 43 11 20 endorsement or its equivalent.

17 (d) Developer's policy shall have a limit per policy period of not less than \$40,000,000
18 combined single limit during the D&C Period and \$10,000,000 combined single limit during the O&M
19 Period, with limits reinstating annually.

20 (e) Each policy shall provide a deductible (but not self-insured retention) not
21 exceeding \$1,000,000 per occurrence but only if the primary policy and any excess policy are written to
22 obligate the insurers to compensate the claimant on a first dollar basis.

23 **6. Pollution Liability Insurance**

24 Developer shall procure and maintain, or cause to be procured and maintained, at all times
25 throughout the Term contractor's pollution liability insurance against claims for injuries to persons or
26 damages to property which may arise from or in connection with the performance of Work by Developer,
27 its agents, representatives, employees or subcontractors, which insurance may be provided through a
28 combination of primary and following-form umbrella or excess policies as provided in Section 13.1.16 of
29 the Agreement.

30 (a) The Developer's pollution liability policy shall cover losses caused by pollution
31 conditions that arise from the operations of Developer described under the scope of Work in the Contract
32 Documents, such covered losses to include:

33 (i) Bodily injury, sickness, disease, mental anguish or shock
34 sustained by any person, including death;

35 (ii) Medical monitoring;

1 (iii) Property damage including physical injury to or destruction of
2 tangible property, including the resulting loss of use thereof, clean-up costs, and the loss
3 of use of tangible property that has not been physically injured or destroyed;

4 (iv) Defense costs, including costs, charges and expenses incurred in
5 the investigation, adjustment or defense of claims for such compensatory damages;

6 (v) Non-owned disposal site coverage for specified sites (by
7 endorsement) if contractor is disposing of waste(s); and

8 (vi) loss, clean-up costs and related legal expense because of a
9 pollution condition arising from the named insured's goods, products, or waste during
10 the course of transportation by a carrier to or from: (A) a job site where contracting
11 services are being performed; or (B) a covered location, including loading or unloading
12 of such goods, products or waste, which the insured becomes legally obligated to pay.

13 (b) Coverage shall apply to sudden and non-sudden pollution conditions including
14 the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals,
15 liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the
16 atmosphere or any watercourse or body of water, provided such conditions are not naturally present in
17 the environment in the concentration or amounts discovered, unless such natural condition(s) are
18 released or dispersed as a result of the performance of covered operations.

19 (c) The policy must include coverage for pollution losses arising out of completed
20 operations.

21 (d) The policy shall be written on an occurrence basis with no sunset clause.

22 (e) Developer shall maintain limits no less than \$10,000,000 per
23 occurrence/\$10,000,000 aggregate during the D&C Period and no less than \$5,000,000 per
24 occurrence/\$5,000,000 aggregate during the O&M Period.

25 (f) The policy shall provide a deductible or self-insured retention not exceeding
26 \$1,000,000 per occurrence.

27 (g) For coverage during the D&C Period, the policy shall include a five-year
28 completed operations/extended reporting period that shall begin on the Project Substantial Completion
29 Date.

30 (h) The policy shall be endorsed as required hereunder to include ADOT, the
31 Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions,
32 universities, officers, officials, agents, and employees as additional insureds.

33 (i) The policy shall contain a waiver of subrogation in favor of ADOT, the Indemnified
34 Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers,
35 officials, agents, and employees.

1 **7. Professional Liability Insurance**

2 **(a) Developer and Lead Engineering Firm**

3 Commencing on the Effective Date with a retroactive date to the date that Professional
4 Services are first rendered respecting the Project and until the conclusion of all Professional Services,
5 Developer shall procure and keep in force, or shall cause the Lead Engineering Firm to procure and keep
6 in force, professional liability insurance as specified in subsections (i) through (v) below, which may be
7 provided through a combination of primary and following-form umbrella or excess policies as provided in
8 Section 13.1.16 of the Agreement.

9 (i) The insurance policy shall provide coverage of liability of
10 Developer and the Lead Engineering Firm arising out of any negligent act, error or
11 omission in the performance of Professional Services for the Project, including for bodily
12 injury or property damage.

13 (ii) The insurance policy shall have a limit of not less than
14 \$50,000,000 per claim and in the aggregate per annual policy period. The aggregate limit
15 shall reinstate annually.

16 (iii) The insurance policy shall provide a deductible or self-insured
17 retention not exceeding \$1,000,000 per claim.

18 (iv) The insurance policy may be a corporate program policy and
19 need not be project-specific.

20 (v) The insurance policy shall specifically include an extended
21 reporting period expiring no sooner than the earlier of (A) eight years after the Project
22 Substantial Completion Date or (B) ten years after issuance of NTP 2.

23 **(b) Other Professional Services Subcontractors**

24 In addition, Developer shall cause each other Subcontractor that provides Professional
25 Services for the Project and not insured pursuant to Section 8(a) of this Exhibit 11 to procure and keep in
26 force professional liability insurance, covering its Professional Services practice, of not less than
27 \$2,000,000 per claim and in the aggregate per annual policy period, which may be provided through a
28 combination of primary and following-form umbrella or excess policies as provided in Section 13.1.16 of
29 the Agreement.

30 (i) Each policy shall insure against liability, including for bodily injury
31 or property damage, arising out of any negligent act, error or omission in the
32 performance of Professional Services in connection with the installation, construction,
33 reconstruction, operation, replacement or other capital improvement.

34 (ii) The aggregate limit shall reinstate annually.

35 (iii) The insurance policy shall include a commercially reasonable
36 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 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.

(vi) Each Subcontractor subject to this Section 8(b) may satisfy the professional liability insurance requirements by annually renewing its corporate program professional liability policy, which need not provide project-specific limits.

8. 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 the applicable employer, shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act only if performing railroad related work;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement;

(d) An endorsement extending coverage to all states operations on an "if any" basis; and

(e) Coverage for United States Longshore and Harbor Workers Act and Jones Act claims, as may be appropriate and required; and

(f) If permitted under the applicable worker's compensation insurance laws, a waiver of subrogation in favor of ADOT and the Indemnified Parties.

9. Employer's Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below, which may be provided through a combination of primary and following-form umbrella or excess policies as provided in Section 13.1.16 of the Agreement.

(a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Developer and all Subcontractors working on or about any Site or otherwise engaged in Work.

(b) Developer and/or the Subcontractor, whichever is the applicable employer, shall be the named insured.

(c) The policy shall have a limit of not less than \$25,000,000 each accident, \$25,000,000 disease – employee and \$25,000,000 disease – policy during the D&C Period, and not less than \$10,000,000 each accident, \$10,000,000 disease – employee and \$10,000,000 disease – policy during the O&M Period, in each case with limits reinstating annually.

(d) The policy shall contain a waiver of subrogation endorsement in favor of ADOT and the Indemnified Parties, using ISO form WC 00 03 13 endorsement or its equivalent.

10. Subcontractors' Insurance

(a) At all times during the Term, Developer shall cause each Subcontractor to provide commercial general liability insurance that complies with Article 13 of the Agreement, with limits of at least \$1,000,000 per occurrence/\$2,000,000 aggregate, unless the Subcontractor is specifically covered by Developer-provided liability insurance. For any Subcontractor undertaking work with an estimated contract value of \$5,000,000 or more, the commercial general liability limits shall be supplemented with an umbrella/excess liability insurance policy with a minimum limit of \$5,000,000, on a following-form basis, unless the Subcontractor is specifically covered by Developer-provided liability insurance. Developer shall cause each such Subcontractor that provides such insurance to include ADOT and each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such commercial general liability insurance need not be Project-specific.

(b) At all times during the Term, Developer shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business or commercial automobile liability insurance meeting the requirements as specified below.

(i) 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. 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.

(ii) Each such Subcontractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall have a combined single limit per policy period of not less than \$1,000,000.

(iv) Each policy shall include ADOT and each of the Indemnified Parties as additional insureds using ISO form CA 20 48 03 10 or its equivalent.

(c) At all times when Work is being performed by any employee of a Subcontractor, Developer shall cause Subcontractor to 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. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

1 (i) An endorsement extending the policy to cover the liability of the
2 insureds under the Federal Employer's Liability Act only if performing railroad related
3 work;

4 (ii) A voluntary compensation endorsement;

5 (iii) An alternative employer endorsement;

6 (iv) An endorsement extending coverage to all states operations on
7 an "if any" basis; and

8 (v) Coverage for United States Longshore and Harbor Workers Act
9 and Jones Act claims, as appropriate and required.

10 (d) At all times during the Term, Developer shall cause each Subcontractor to procure
11 and keep in force employer's liability insurance as specified below.

12 (i) The policy shall insure against liability for death, bodily injury,
13 illness or disease for all employees of the Subcontractor working on or about any Site or
14 otherwise engaged in the Work.

15 (ii) The Subcontractor shall be the named insured.

16 (iii) The policy shall have a limit of not less than \$1,000,000 per
17 accident and in the aggregate during the period of insurance, and may be included in an
18 umbrella insurance combined with such other insurance that this Exhibit 11 stipulates
19 may be similarly included.

20 (e) ADOT shall have the right to contact the Subcontractors directly to verify the
21 above coverages, if Developer does not provide verification of such Subcontractor coverage as and when
22 required under Section 13.1.5 of the Agreement.

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EXHIBIT 12

CONTRACT MODIFICATION REQUEST FORM

[See attached]



**ALTERNATIVE DELIVERY
CONTRACT MODIFICATION REQUEST**
Request # _____

CM @ R ☐

Design-Build-Operate-Maintain ☐

Page ____ of ____

Contractor:	Project No.:	TRACS No.:	Date:
Project Manager:	Design Firm:	Initiator:	

Request Change (What):

Rough order of magnitude FA NFA
\$ _____ \$ _____

Reason/Justification (Why):

General Supplemental Agreement Types:

If Other, please explain:

List Technical Managers:

ADOT Recommendation:

Concept Recommended Yes ☐ No ☐ _____ **Date:**

Attachment Yes ☐ No ☐ *Senior/Resident Engineer*

Concept Recommended Yes ☐ No ☐ _____ **Date:**

Attachment Yes ☐ No ☐ *Construction Manager*

Concept Recommended Yes ☐ No ☐ _____ **Date:**

Attachment Yes ☐ No ☐ *Sr. Deputy State Engineer, Operations State Engineer's Office*

Concept Recommended Yes ☐ No ☐ **Eligible for Federal Reimbursement** Yes ☐ No ☐

<div style="text-align: right; margin-right: 100px;">_____</div> <div style="text-align: right;">Date: _____</div> <div style="text-align: center; margin-top: 10px;">FHWA</div>
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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 13

COMPENSATION AMOUNT SPECIFICATIONS

This Exhibit 13 sets forth the methods for calculating the Compensation Amounts 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 Except as set forth in Section 1.1.3 below, negotiated lump sum Extra Work Costs shall also include a 15% markup for Developer indirect costs, field office overhead, and profit. Where the Extra Work is performed by Subcontractors, the Subcontractor may include a 15% markup for the Subcontractor's 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 Where Extra Work is performed by Subcontractors, Developer may only include a supplemental markup of five percent of the Subcontractor's costs as Extra Work Costs. Developer's five percent markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the Extra Work. ADOT will apply such 5% markup to the Subcontractor's Extra Work Costs less the Subcontractor's 15% markup for overhead and profit.

1.1.4 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. Price negotiations for lump sum Extra Work Costs shall be on an Open Book Basis.

1.1.5 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 from such sales or use taxes 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 Work shall include the cost of labor for workers used in the actual and direct performance of the Force Account Work and labor costs directly attributable to pursuing and obtaining Governmental Approvals, if any, required to perform the Force Account Work. Workers include foremen and classifications below foremen, in each case actually engaged in the performance of the Extra Work or in direct charge of specific operations included in the Force Account Work. Costs, salaries, or any expenses associated with Project superintendence personnel or on-Site clerical staff, except as provided in Section 1.2.5 below, are not allowable labor costs under this Section 1.2.1. 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 allowable to include in labor costs in accordance with Section 1.2.1 above, the Force Account 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

1 holidays, use of vehicles, PPE (personal protective equipment), office, office furniture, equipment,
2 supplies, etc.

3 Developer shall provide to ADOT the hourly wage rates and fringe benefit rates before
4 the start of the Force Account Work as part of Developer's Relief Request, final documentation of Relief
5 Event or response to Request for Change Proposal, as applicable, required under Sections 16.1.3 and
6 17.1.3 of the Agreement, respectively. ADOT may verify the hourly wage rates and fringe benefit rates by
7 comparing such rates to actual payroll records or signed timesheets of Developer, Affiliates or
8 Subcontractors, as applicable. The terms of this paragraph shall apply to this Section 1.2.1.2(a), and to
9 Section 1.2.1.2(b) below.

10 (b) Overtime Pay

11 Overtime pay shall apply as provided by applicable Law. When allowable
12 labor costs include overtime pay, such overtime pay shall be calculated as follows:

13 Overtime pay (OT), which is determined as follows:

$$14 \quad OT = [(WR \times 1.5) + FR] \times 1.5$$

15 Where:

16 WR, FR and 1.5 are as provided in Section 1.2.1.2(a) above.

17 (c) Subsistence and Travel Allowance

18 The actual subsistence and travel allowances paid to the workers as
19 required by collective bargaining agreements or as approved by ADOT shall be allowable for
20 reimbursement. Rates for subsistence and travel allowances, including rates for lodging, meals and
21 mileage, shall not exceed the rates in effect in ADOT's Policies and Procedures "FIN-6.02 Travel
22 Authorization Policy" at the time the Force Account Work is performed. Developer shall not markup, and
23 ADOT will not pay any markup on, travel or subsistence allowances.

24 1.2.2 Materials

25 1.2.2.1 ADOT-Furnished Materials

26 ADOT reserves the right to furnish any materials it deems appropriate for use in
27 Force Account Work, and Developer shall have no claims for any costs, overhead or profit on the materials
28 provided by ADOT, or lost profits due to ADOT furnishing the materials.

29 1.2.2.2 Developer-Furnished Materials

30 Developer may include in Extra Work Costs materials furnished by Developer only
31 if the materials meet the requirements of the Contract Documents, are necessary to perform, and are
32 actually used to perform, the Force Account Work. The reimbursable cost of those materials will be the
33 actual invoice cost to the purchaser of such materials — whether the purchaser is Developer, an Affiliate,
34 or a Subcontractor — from the Supplier thereof, including actual freight and express charges, except as
35 the following are applicable:

1 (a) Discounts and Rebates

2 If a cash, trade or other discount or rebate is offered or available to the
3 purchaser, the discount or rebate shall be credited to ADOT even if the discount or rebate is not taken by
4 the purchaser.

5 (b) Non-direct Purchases

6 If materials are procured by the purchaser by any method that is not a
7 direct purchase from a direct billing by the actual Supplier to the purchaser, the cost of those materials
8 shall be deemed to be the price paid to the actual Supplier as determined by ADOT plus the actual costs,
9 if any, incurred in the handling of the materials.

10 (c) Purchaser-supplied Materials

11 If the materials are obtained from a supply or source owned wholly or
12 in part by the purchaser, the cost of those materials shall not exceed the lower of: (i) the price the
13 purchaser paid for similar materials furnished from that source and used to perform other work; or (ii)
14 the current wholesale price for those materials delivered to the Site.

15 (d) Excessive Costs

16 If the cost of the materials is, in the opinion of ADOT, excessive, then
17 the cost of the material shall be deemed to be the lowest current wholesale price at which the materials
18 were available in the quantities delivered to the Site, less any discounts or rebates as provided in Section
19 1.2.2.2(a) above.

20 (e) Evidence of Cost

21 ADOT will pay Developer for materials only after the materials invoice
22 is submitted by Developer to ADOT along with any documentary backup for the cost of the materials, less
23 any discounts as provided Section 1.2.2.2(a) above.

24 (f) Equipment Costs

25 The cost of owned or rented equipment used to haul materials to the
26 Project is not part of material costs that may be recovered by Developer. Such equipment, when used for
27 hauling materials, shall be listed under cost of equipment.

28 1.2.3 Equipment Rental

29 1.2.3.1 General Equipment Rental Provisions

30 Force Account Work costs for the use of equipment owned by Developer, an
31 Affiliate or a Subcontractor shall be determined at the rental rates listed for that equipment in the current
32 edition and appropriate volume of the Rental Rate Blue Book (RRBB) as published by EquipmentWatch®,
33 which is in effect on the date on which the Force Account Work is performed, modified in accordance with
34 the formula below, and regardless of ownership and any rental or other agreement, if they may exist, for
35 the use of that equipment entered into by Developer or any Subcontractor. 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.

(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 (HOC) 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 Work costs, provided that the attachment has been approved by ADOT as being necessary to the Force Account 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 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 Work may be rejected by ADOT. Rental time shall apply to eligible equipment used for Force Account 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 Work costs.

(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 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 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 Work shall be determined in accordance with the following stand-by rate (SBR) formula:

$$\text{SBR} = F \times (R / 176) \times 0.5$$

Where "F" and "R" are as provided in Section 1.2.3.1.

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 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 Work has been suspended by Developer. Developer shall request ADOT's approval for stand-by time no less than 48 hours prior to commencement of such stand-by time.

1.2.3.3 Outside Rented Equipment

In cases where a piece of equipment to be used for Force Account Work is rented or leased by Developer from a third party (not an Affiliate or Subcontractor) exclusively for such Force Account 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 (including owned equipment) to be included in calculating Extra Work Costs for needed equipment shall be the time the equipment is in operation on the Force Account Work being performed, and, in addition, shall include no more than the time required to move the equipment to the location of the Force Account 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 Work on other than the Force Account Work either before or after the Force Account Work. Loading and transporting costs will be included in Force Account 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 Work costs if the equipment is used at the site of the Force Account Work on other than the Force Account Work.

(b) For use of equipment moved from one location on the Site to another location on the Site exclusively for the Force Account Work, the cost of transferring and/or moving the equipment to the site of the Force Account 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 for the purpose of determining allowable Force Account Work costs.

(d) Where the move of the equipment is made by common carrier, the Force Account Work costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount to cover profit, overhead and indirect costs. If Developer hauls the equipment with its own forces, costs will be included in the Force Account 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 Work is performed and the day that the use of the equipment is discontinued for Force Account Work shall be the actual time that the equipment is in operation on the Force Account Work.

1.2.4 Fees and Charges of Governmental Entities

Extra Work Costs for Force Account Work shall include fees and charges paid to Governmental Entities for Governmental Approvals required to perform the Force Account 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 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 Contractor, is entirely occupied with Force Account Work, in which case the salaries of the superintendent may be included in the Extra Work

Costs for labor items specified above when the nature of the Force Account Work is such that their services in the nature of superintendent 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 Work costs compensation as calculated above times the applicable sales tax rate to cover sales tax. Accordingly, the amount for sales tax shall be calculated as follows:

Reimbursable amount = ((Total Force Account Work costs) x .65) x sales tax rate

ADOT shall not pay any other or additional amount for or on account of sales tax with respect to the Force Account 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 submitted in support of Force Account Work costs. If materials used on the Force Account Work are not specifically purchased for such Force Account 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. For transportation costs of materials taken from Developer's stock, Developer shall include certified payroll records. All such costs for materials from Developer's stock shall be subject to ADOT's approval.

1.2.7.2 Developer shall submit for approval, and shall ensure that Subcontractors submit for approval, an equipment list for all equipment to be used during the performance of the Force Account Work no less than 72 hours prior to the start of any Force Account Work.

1.2.7.3 Developer shall submit payrolls broken down by day and other cost data documents for all Force Account Work within 30 days after completion of such Force Account 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 Work detailing the following:

(a) Name, classification, date, daily hours, total hours, rate, and amount for each foreman and laborer or other labor classification;

(b) Designation, dates, daily hours, total hours, rental rate (as calculated in accordance with Section 1.2.3.1 for owned equipment, and Section 1.2.3.3 for outside rented equipment), 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 Work by Affiliates

1.2.8.1 The direct costs of an Affiliate's labor, materials, and equipment used in performing Force Account Work shall be limited in accordance with Section 11.7 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 Work by Subcontractors

When Force Account 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 Work. ADOT will apply such 5% markup to the Subcontractor's Force Account Work costs less the Subcontractor's allowable 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 a Project Bond, then ADOT will pay an additional amount equal to the lesser of (a) the incremental increase in the cost of such Project Bond(s) attributable thereto, or (b) .05 percent of the total amount otherwise calculated as the Force Account Work costs.

1.2.11 Non-Allowable Charges

If Developer performs Force Account Work, 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 or lost opportunity to earn 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.

1 **2. DELAY COSTS**

2 Delay Costs shall be determined as follows:

3 **2.1 Direct Cost of Idle Labor**

4 Compensation for the direct cost of the actual idle time of labor will be determined in
5 accordance with the following Idle Labor rate (IL) formula. For recovery of this type of cost, however,
6 Developer's daily reports must show that the workers were on Site, were unable to perform their work,
7 could not have been shifted to other tasks or jobs, and must be paid for idle time under the terms of
8 employment.

9
$$IL = (WR + FR) \times 1.35$$

10 Where:

11 "WR" and "FR" are as provided in Section 1.2.1; and

12 1.35 = the labor multiplier providing for a 35 percent labor burden rate.

13 **2.2 Direct Cost of Idle Equipment**

14 Compensation for the direct cost of the actual idle time of equipment used in the
15 performance of Work shall be determined in accordance with the following idle equipment rate (IE)
16 formula:

17
$$IE = F \times (R / 176) \times 0.5$$

18 Where "F" and "R" are as provided in Section 1.2.3.1;

19 subject to the following:

20 (a) The Delay Costs will be determined for the actual normal working time during
21 which the delay condition exists, but in no case will exceed eight hours in any 24-hour day or 40 hours in
22 a week;

23 (b) The Delay Costs will be determined for the calendar days, excluding Saturdays,
24 Sundays and Holidays, during the existence of the delay, except that, when Extra Work Costs for rental of
25 equipment are accruing under the provisions in Section 1.2.3.2 above, Delay Costs shall not include
26 equipment rental costs for such equipment. For purposes of clarity, Developer shall not be entitled to
27 Extra Work Costs for both the rental of equipment under Section 1.2.3.2 and Delay Costs for the same
28 equipment for the same time period; and

29 (c) The Delay Costs will only apply to idle equipment physically located at the Site at
30 the time of the delay. If ADOT determines that idle equipment should not remain on the Site during a
31 delay, then ADOT will pay the actual, reasonable costs, without markup, to: (i) demobilize the equipment
32 during the delay period; and (ii) remobilize the equipment at the end of the delay period. Compensation
33 for idle equipment will not be paid while the subject equipment is demobilized from the Site during a
34 delay period.

1 **2.3 Markup for Subcontractor Direct Costs of Idle Labor and Equipment**

2 In the case of a Relief Event Delay, Delay Costs shall include a maximum allowable markup
3 of five percent of the direct costs of a Subcontractor's idle labor and idle equipment determined in
4 accordance with Sections 2.1 ("Direct Cost of Idle Labor") and 2.2 ("Direct Cost of Idle Equipment") above,
5 respectively. This markup shall constitute full compensation for all labor-related and equipment-related
6 indirect costs, expenses and profit of the Subcontractor related to such Relief Event Delay.

7 **2.4 Overhead and Profit**

8 An additional amount per day of Relief Event Delay ("D" in the formula below) will be
9 added as Delay Costs as compensation for all other items for which a specific amount is not provided,
10 including all overhead and profit. Such additional amount shall be determined as follows:

11
$$D = (A \times B) / C$$

12 Where:

13 A = Original Lump Sum D&C Price on the Effective Date

14 B = 10%

15 C = [insert # days from and including NTP1 to the proposed Project Substantial
16 Completion Deadline from Form Q of the Proposal, plus 100 days]

17 D = Amount per Day

18 **2.5 Exclusions from Delay Costs**

19 Developer shall not be entitled to Delay Costs:

- 20 (a) For home office costs and overhead;
- 21 (b) For delay to Work that is not a Controlling Work Item;
- 22 (c) For the period of Relief Event Delay that is concurrent with any other delay that
23 is not caused by a Relief Event; or
- 24 (d) that Developer can or could reasonably mitigate.
- 25

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EXHIBIT 14

NONCOMPLIANCE EVENT TABLES

Exhibit 14-1	D&C Period Noncompliance Event Table
Exhibit 14-2	O&M Period Noncompliance Event Table

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2
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EXHIBIT 14-1

D&C PERIOD NONCOMPLIANCE EVENT TABLE

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Requirements	Number of Noncompliance Points Per Breach or Failure	Cure Period	Assessment Category
Reporting & Complying Activities						
14.1-01	General	Governmental Approvals	Prior to beginning construction, deliver to ADOT any executed copy of a Governmental Approval that Developer obtains as required by <u>Section 6.3</u> of the Agreement	2	7 days	B
14.1-02	General	ADOT Facilities	Comply with the operating and maintenance requirements of <u>Section GP 110.05</u> of the Technical Provisions regarding office facilities and equipment.	1	If affecting life, safety or habitability – 48 hours Other issues – 7 days	A
14.1-03	General	ADOT Notification of monthly payments	Provide ADOT with notification of monthly payments to Subcontractors as required by <u>Section 15.10.1</u> of the Agreement.	1	30 days	B
Contract Activities						
14.1-04	Contracting and Labor Practices	Disclosure of Subcontracts and Subcontractors	For each Subcontract (regardless of tier), Developer shall submit to ADOT a completed Professional Services Subcontractor Request Form or Construction & Maintenance Subcontractor Request Form before the Subcontractor commences work, as required by <u>Section 11.4.2(a)</u> of the Agreement	2	7 days	B
14.1-05	Contracting and Labor Practices	Disclosure of Subcontracts and Subcontractors	Comply with the Subcontract submission requirements set forth in <u>Section 11.4.2(c)</u> of the Agreement.	2	7 days	A
Project Management Activities						

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Requirements	Number of Noncompliance Points Per Breach or Failure	Cure Period	Assessment Category
14.1-06	Project Management Plan	Audit	Carry out internal audits at the times prescribed in the Project Management Plan in accordance with <u>Section 5.4.7</u> of the Agreement.	3	7 days	B
14.1-07	Project Management Plan	Quality Management	Establish and maintain updates to the Quality Management Plan in accordance with <u>Section GP 110.07.2.1</u> of the Technical Provisions.	3	7 days	A
Environmental Activities						
14.1-08	Environmental Compliance	Environmental Management Plan	Maintain and update the complete Environmental Management Plan as required by <u>Section DR 420</u> of the Technical Provisions.	3	7 days	A
14.1-09	Environmental Compliance	Stormwater	Comply with the <u>Section CR 420.3.2.2</u> of the Technical Provisions regarding SWPPP measures	2	4 days	A
14.1-10	Environmental Compliance	Notification	Notify ADOT of Hazardous Materials or a Recognized Environmental Condition as set forth in <u>Section 8.8</u> of the Agreement.	4	1 day	A
14.1-11	Environmental Compliance	Property Access	Comply with property access requirements as required by <u>Section CR 430.3.1</u> of the Technical Provisions.	3	4 hours	A
Utilities Activities						
14.1-12	Utility Adjustments	Maintain service	Maintain a fully operational utility service, in accordance with <u>Section DR 430.3.5</u> of the Technical Provisions.	3	3 days	A
Design and Construction Activities						
14.1-13	Design and Construction	Construction Warranties	Ensure extension of third parties warranties to ADOT or correct any defective Work under such warranties all as required by <u>Article 14</u> of the Agreement.	3	14 days	A
14.1-14	Design and Construction	Land Surveys	Comply with the land survey requirements of <u>Section CR 410.3</u> of the Technical Provisions.	2	7 days	A
14.1-15	Design and Construction	Testing	Provide test results or reports as required by <u>Section 5.8</u> of the Agreement.	3	7 days	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Requirements	Number of Noncompliance Points Per Breach or Failure	Cure Period	Assessment Category
14.1-16	Design and Construction	Maintenance During Construction	Comply with the Repair Response times specified in <u>Attachment 500-1</u> of the Technical Provisions. For this purpose, Attachment 500-1 is deemed to apply throughout the Project to Maintenance During Construction.	Corresponding number of Noncompliance Points in <u>Exhibit 14-2</u>	Equal to the time specified for "Repair Response"	A

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EXHIBIT 14-2

O&M PERIOD NONCOMPLIANCE EVENT TABLE

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Requirements	Number of Non Compliance Points Per Breach or Failure	Cure Period	Assessment Category
PLANNING AND REPORTING						
14.2-01	Reporting	Prepare and update OMMP	Failure to prepare and update the OMMP as required by <u>Sections OMR 400.1.1B</u> and <u>400.3.3E</u> of the Technical Provisions.	2	10 Business Days	A
14.2-02	Reporting	Respond to ADOT notification	Failure to respond to Notification from ADOT and other public entities regarding Project deficiencies as required by <u>Section OMR 400.1.1L</u> of the Technical Provisions.	2	3 Business Days	A
14.2-03	Plan - Safety	Submit reports to ADOT for review and acceptance	Failure to prepare and submit the OMSMP and updates in accordance with <u>Sections OMR 400.2.1.1</u> and <u>400.3.3E</u> of the Technical Provisions.	2	3 Business Days	A
14.2-04	Plan – Quality Control	Submit reports to ADOT for review and acceptance	Failure to prepare and submit the OMQMP and updates in accordance with <u>Sections OMR 400.2.1.2</u> and <u>400.3.3E</u> of the Technical Provisions.	2	10 Business Days	A
14.2-05	Plan - Operations	Submit reports to ADOT for review and acceptance	Failure to prepare and submit the Operations Manual and update in accordance with <u>Sections OMR 400.2.1.3</u> and <u>400.3.3F</u> of the Technical Provisions.	2	10 Business Days	A
14.2-06	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 <u>Section 19.2.1</u> of the Agreement and <u>Section OMR 400.2.5.3</u> of the Technical Provisions.	2	5 Business Days	A
14.2-07	Inspections	Inspection activities	Failure to perform timely Inspection of the Project in accordance with <u>Section OMR 400.3.1</u> of the Technical Provisions.	2	5 Business Days	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Requirements	Number of Non Compliance Points Per Breach or Failure	Cure Period	Assessment Category
14.2-08	Reporting	Submit report to ADOT for review and acceptance	Failure to prepare any Monthly O&M Work Report and submit to ADOT in accordance with <u>Section OMR 400.3.3A</u> of the Technical Provisions and <u>Section 19.2.1</u> of the Agreement.	3	10 Business Days	A
14.2-09	Reporting	Submit reports to ADOT for review and acceptance	Failure to prepare any Annual O&M Work Report and submit to ADOT in accordance with <u>Section OMR 400.3.3B</u> of the Technical Provisions.	2	3 Business Days	A
14.2-10	Reporting	Submit reports to ADOT for review and acceptance	Failure to prepare an O&M Punch List and submit to ADOT in accordance with <u>Section OMR 501.2</u> of the Technical Provisions.	2	3 Business Days	A
TP ATTACHMENT						
14.2-11	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 <u>Attachment 500-1</u> of the Technical Provisions.	1	Repair response time (temporary or permanent) identified in <u>TP Attachment 500-1</u>	A
14.2-12	Reference 2 – 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 Pavement section (Reference 2) of <u>Attachment 500-1</u> of the Technical Provisions.	2	Repair response time (temporary or permanent) identified in <u>TP Attachment 500-1</u>	A
14.2-13	Reference 3 – Curb and Gutter	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 Curb and Gutter section (Reference 3) of <u>Attachment 500-1</u> of the Technical Provisions.	1	Repair response time (temporary or permanent) identified in <u>TP Attachment 500-1</u>	A
14.2-14	Reference 4 – Safety and Security	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 <u>Attachment 500-1</u> of the Technical Provisions.	2	Repair response time (temporary or permanent) identified in <u>TP Attachment 500-1</u>	A
14.2-15	Reference 5 – Structures	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 <u>Attachment 500-1</u> of the Technical Provisions.	1	Repair response time (temporary or permanent) identified in <u>TP Attachment 500-1</u>	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Requirements	Number of Non Compliance Points Per Breach or Failure	Cure Period	Assessment Category
14.2-16	Reference 6 – Ponding, Flooding, Drainage and Slopes	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 <u>Attachment 500-1</u> of the Technical Provisions.	2	Repair response time (temporary or permanent) identified in <u>TP Attachment 500-1</u>	A
14.2-17	Reference 7 – ITS and Flex Lanes Elements	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 ITS and Flex Lanes Elements section (Reference 7) of <u>Attachment 500-1</u> of the Technical Provisions.	3	Repair response time (temporary or permanent) identified in <u>TP Attachment 500-1</u>	A

EXHIBIT 15

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

ADOT Authorized Representative(s)

All Matters:

- Annette Riley
- Floyd Roehrich, Jr

Design:

- Annette Riley

Construction:

- Andrew Roth

Developer's Authorized Representative(s)

All Matters:

- Allen Mills, Project Manager

Designee:

- Nicholas Wiatrowski, Area Manager